FINAL
ENVIRONMENTAL IMPACT REPORT/ ENVIRONMENTAL IMPACT STATEMENT

for the

UPPER GUADALUPE RIVER FLOOD CONTROL PROJECT

VOLUME IV
COMMENTS ON THE DRAFT EIR/EIS

Prepared by

SANTA CLARA VALLEY WATER DISTRICT
U.S. ARMY CORPS OF ENGINEERS

November 1999

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CHAPTER 14

RESPONSE TO COMMENTS

CHAPTER 14

RESPONSE TO COMMENTS

This chapter consists of five sections, which include the responses to comments, both written and oral, received on the Draft EIR/EIS for the Upper Guadalupe River Flood Control Project, as well as other material which is related to the responses to comments. These five sections are:

- Section 14.1, which provides an introduction to the responses to comments, and includes information about the certification of a Final EIR, along with other information to assist the reader in understanding the responses.
- Section 14.2, which contains the written comments submitted, and transcripts of the public hearing and Santa Clara Valley Water District Board of Directors Meeting.
- Section 14.3, which includes Master Responses addressing issues which were frequently cited in the comments on the Draft EIR/EIS.
- Section 14.4, which consists of the Responses to Comments.
- Section 14.5, which includes Staff-initiated text changes to the Draft EIR/EIS.

Sections 14.1 and 14.2 are contained in Volume IV; Sections 14.3 through 14.5 are in Volume V. Editorial revisions to the Draft EIR/EIS made by the EIR/EIS authors in response comments are shown in both the Master Responses and Responses to Comments.

SECTION 14.1

INTRODUCTION

SECTION 14.1

INTRODUCTION

The Final EIR/EIS consists of the following:

Volume I	Draft EIR/EIS Text
Volume II	Plate Volume
Volume III	Appendices
Volume IV	Comments on the Draft EIR/EIS
Volume V	Responses to Comments
Volume VI	Revised EIR/EIS Text
Volume VII	New and Revised Appendices
Volume VIII	Mitigation and Monitoring Plan

Volumes I through III were published in January 1997.

The Comments on the Draft EIR/EIS include written comments received during or shortly after the public review period, oral comments made at the public hearing on April 3, 1997, and oral comments made by the Santa Clara Valley Water District Board of Directors at a meeting on November 4, 1997.

CERTIFICATION AND PROJECT SELECTION PROCESS

The Santa Clara Valley Water District Board of Directors will hold a meeting to consider certification of the Final EIR. In order to certify the Final EIR, the Board must find that:

a) the Final EIR has been completed in compliance with CEQA; and

b) the Final EIR was presented to the decision making body of the lead agency and that the decision making body reviewed and considered the information contained in the Final EIR prior to selection of a Project (CEQA Guidelines Section 15090).

If the District certifies the Final EIR, the District will make the final decision regarding which Project alternative will be selected for implementation, and the Notice of Determination will be filed. At the time of project selection, the decision-making body, that is, the Santa Clara Valley Water District Board of Directors, must consider the information presented in the Final EIR. The decision makers must balance the benefits of a proposed alternative against its unavoidable environmental risks. If the benefits outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable." If the Board makes such a decision, the Board must support the action by writing the specific reasons for approval; this is called a Statement of Overriding Considerations and it must be included in the record of project approval (CEQA Guidelines Section 15093).

The Section 404/10 Permit Application will be completed for the selected Project, and the Corps will consider the issuance of the Permit and Record of Decision.

PUBLIC INVOLVEMENT DURING THE FINAL EIR/EIS PHASE

The public comment period for the Draft EIR/EIS began on February 11, 1997 with an announcement of the availability of the Draft EIR/EIS. In addition, a Notice of Availability was published in the Federal Register on February 28, 1997. The formal public comment period closed on April 18, 1997. However, comments received after the close of the public comment period, through May 27, 1997, have been considered in the preparation of the Final EIR. On April 3, 1997, a public hearing on the Draft EIR/EIS was held before the Santa Clara Valley Water District Board of Directors. About 100 members of the public attended.

Copies of the Draft EIR/EIS were distributed to federal and state agencies, local governments, elected officials, and libraries. The Draft EIR/EIS was provided at no cost to others upon request. Free copies of the Executive Summary were also provided.

Copies of the Draft EIR/EIS were available for review at the District offices and at eight public libraries in San Jose.

USE OF COMMENT SUMMARIES

The full text of all written comments as well as those from the transcript of the public hearing are included in this Volume. In addition, to facilitate reading the Response to Comments, a summary of each comment is inserted in italics just prior to each response. This summary does not substitute for the actual comment; the reader is urged to read the full original text of all comments. The responses are prepared in answer to the full text of the original comment, and not to the abbreviated summary.

CONSIDERATION OF RECIRCULATION

If significant new information is added to an EIR or EIS after public review, the lead agency is required to recirculate the revised document (CEQA Guidelines Section 15088.5 and 40 CFR 1502.9). "Significant new information" includes, for example, a new significant environmental impact or a substantial increase in the severity of an impact. New information is not considered significant unless the document is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the proponent has declined to implement. In response to comments, several changes have been made to the Draft EIR/EIS. However, no impacts described as less than significant in the Draft EIR/EIS have been re-evaluated as significant as a result of these changes. Also, no substantial increase in the severity of impacts has been identified as a result of information brought forward in the comments. In summary, no new significant impacts have been identified and, as a result, there is no need to recirculate the Draft EIR/EIS.

USE OF THE TERM "SIGNIFICANCE"

The following information is provided to clarify the difference between NEPA and CEQA requirements for the determination of significance. While CEQA requires that a determination of significant impacts be stated in the EIR/EIS, NEPA does not. Under NEPA, the concept of significance is used to determine whether an EIS, or some lower level of documentation, will be required. Some impacts determined to be significant under CEQA may not be of sufficient magnitude to be determined significant under NEPA. Once a decision to prepare an EIS is made, it is the magnitude of the impact that is evaluated and no judgment of its significance is deemed important for the text. Therefore, for the purposes of the impact discussion in the EIR/EIS, determinations of significance are made in the CEQA context.

RESPONSES TO COMMENTS

The regulations for implementing CEQA and NEPA direct the lead agency to respond to substantive public comments on the Draft EIR/EIS. All comments received during the comment period are responded to in this Chapter. The range of possible responses includes requiring specific mitigation measures, modifying alternatives, supplementing analyses, making factual corrections, and explaining why comments do not warrant further agency response. In cases where public response has been especially voluminous, the agency may summarize or consolidate similar comments, as long as all substantive issues are represented.

This chapter includes Master Responses which respond to common questions, and responses to each individual comment on the Draft EIR/EIS. Editorial revisions to the Draft EIR/EIS made by the EIR/EIS authors in response comments are shown in both the Master Responses and Responses to Comments. Text revisions are formatted in revision fashion: ~~strikeouts~~ indicate removed text and underlines indicate additional text.

SECTION 14.2

COMMENTS

SECTION 14.2

COMMENTS

The following list shows the comment letters and oral comments that were received by the Santa Clara Valley Water District. The District received 32 letters commenting on the Draft EIR/EIS, and 12 letters commenting on the public notice for the U.S. Army Corps of Engineers 404 Permit. This tabulation is followed by copies of the letters and by public hearing and meeting transcripts, which are annotated to indicate comment numbers. Letters commenting on the Draft EIR/EIS were assigned numbers from 1 through 32. Letters commenting on the public notice were assigned numbers in the 100 series. Oral comments received at the public hearing or made by the Santa Clara Valley Water District Board of Directors were assigned numbers in the 200 series. These numbers correspond to the responses that are presented in Volume V, Section 14.4.

COMMENT LETTERS RECEIVED ON DRAFT EIR/EIS

Letter #	Name	Agency/Organization	Letter Date
1	Antero A. Rivasplata	State of California, Governor's Office of Planning and Research	4/11/97
2	James R. Bybee	U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service	4/22/97
3	David Farrel	United States Environmental Protection Agency, Region IX	4/18/97
4	Lewis A. Whitney	Department of the Army, U.S. Army Engineer District, Sacramento, Corps of Engineers	4/4/97
5	Brian Hunter	State of California, Department of Fish and Game	4/17/97
6	Harry Y. Yahata	State of California, Department of Transportation	4/4/97
7	Ahok Vyas	County of Santa Clara, Roads and Airports Department, Land Development and Permits	4/16/97

Letter #	Name	Agency/Organization	Letter Date
8	Ruth M. Shriber	County of Santa Clara, Environmental Resources Agency, Parks and Recreation Department	4/17/97
9	Janis Moore	City of San Jose, Department of Planning, Building and Code Enforcement	4/18/97
10	Nancy Bernardi	Guadalupe - Coyote Resource Conservation District	4/16/97
11	Ed Mello	San Jose Water Company	4/18/97
12	Thomas J. Zlatunich	Pacific Gas and Electric Company	3/24/97
13	Lawrence M. Johmann	Western Waters Canoe Club	4/17/97
14	Rick Bernardi	Lifeweb	4/18 and 4/21/97
15	Bobbie Paul		4/15/97
16	David F. Boutcher	Canoas Garden Neighborhood Association	4/18/97
17	Julia Bott	Sierra Club, Loma Prieta Chapter	4/18/97
18	Eli Reinhard	Arcadia Development Co.	4/17/97
19	Janine C. Ogando	Miller Starr & Regalia	4/18/97
20	Ruth Goldstein	Sequoia Management Co.	4/15/97
21	Gerry De Young	Ruth and Going, Inc.	4/17/97
22	Lawrence Lowell Ames	Willow Glen Neighborhood Association	4/18/97
23	Kathie Clark	The Atrium	4/18/97
24	Donna Bernardi	Friends of the Guadalupe, The Silicon Valley Chapter of Urban Creeks Council	4/18/97
25	Roger Castillo	Silichip Chinook, Salmon and Steelhead Restoration Group	4/18/97
26	Glenn Rogers	California Native Plant Society, Santa Clara Valley Chapter	4/17/97
27	George G. Howe		3/12/97
28	Vernon Dale Tripp		4/14/97
29	Craig K. Breon	Santa Clara Valley Audubon Society	4/18/97
30	Libby Lucas		4/18/97

Letter #	Name	Agency/Organization	Letter Date
31	Russell Y. Robinson	South Bay Yacht Club	4/3/97
32	Patricia Sanderson Port	United States Department of the Interior, Office of the Secretary, Office of Environmental Policy and Compliance	5/27/97
101	Wayne S. White	United States Department of the Interior, Fish and Wildlife Services, Ecological Services, Sacramento Field Office	5/2/97
102	Daniel Meer	United States Environmental Protection Agency, Region IX	5/1/97
103	Donna Bernardi	Friends of the Guadalupe, The Silicon Valley Chapter of Urban Creeks Council	4/23/97
104	Brian Hunter	State of California, Department of Fish and Game	4/23/97
105	Nancy Bernardi	Guadalupe - Coyote Resource Conservation District	4/21/97
106	David F. Boutcher	Canoas Garden Neighborhood Association	4/18/97
107	Libby Lucas		4/23/97
108	Lawrence M. Johmann	Western Waters Canoe Club	4/23/97
109	Rick Bernardi	Lifeweb	4/23/97
110	Vernon D. Tripp		4/18/97
111	John Beall		4/24/97
112	Nadell Gayou	Division of Local Assistance, Department of Water Resources	4/23/97

ORAL COMMENTS RECEIVED ON DRAFT EIR/EIS

Commentor	Name	Agency/Organization	Date
200	Tom Fletcher	City of San Jose Public Works	4/3/97
201	Judith LaGalante		4/3/97
202	Robert Long		4/3/97
203	Kathie Long		4/3/97
204	Andrew Benkert		4/3/97
205	Mark Protsik		4/3/97

Commentor	Name	Agency/Organization	Date
206	Allen Aronson		4/3/97
207	Kevin David		4/3/97
208	Frank Cucuzza		4/3/97
209	Russ Robinson		4/3/97
210	Karl Laucher		4/3/97
211	Roger Castillo		4/3/97
212	Nancy Bernardi		4/3/97
213	Marc Voorhoeve		4/3/97
214	Larry Ames		4/3/97
215	Bobbie Paul		4/3/97
216	Louis Zarate		4/3/97
217	Tom Borden		4/3/97
218	Larry Johmann		4/3/97
219	Jon Oakes		4/3/97
220	David Boutcher		4/3/97
221	Rick Bernardi		4/3/97
222	Bud Beede		4/3/97
223	John Wilson		4/3/97
224	Don Dugdale		4/3/97
225	Paula Oakes		4/3/97
226	Gary Jansen		4/3/97
227	Randy Klein		4/3/97
228	James Gale		4/3/97
229	A.O. Black		4/3/97
230	Rosemary Palacios		4/3/97
231	Joe Martin		4/3/97
232	Ruth Goldstein		4/3/97
233	William Garbett		4/3/97
234	Rick Bernardi		4/3/97
235	Mike Johnston		4/3/97
236	Unidentified Audience Member		4/3/97

Commentor	Name	Agency/Organization	Date
237	Bob Strickland		4/3/97
238	Bobbie Paul		4/3/97
239	Mark Protzic		4/3/97
240	Allen Aronson		4/3/97
241	Larry Johmann		4/3/97
242		Santa Clara Valley Water District Board of Directors	11/4/97

ORIGINAL DOCUMENT IN FILES

7/14 PKWhitlock "
LKeller "
JTFerguson "
JCChen "
RLDavis "
RLCallender "
RRBlair "
SATippets "
LSquires "
GAFowler "

IShirtani w/att
RRTalley "
CJForstner "
RCMuravez "
KFaraniella "
VLico "

State of California
GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
1400 TENTH STREET
SACRAMENTO 95814

PETE WILSON
GOVERNOR

LEE GRISSOM
DIRECTOR

COMMENT LETTER 1

April 11, 1997

DENNIS CHEONG
SANTA CLARA VALLEY WATER DISTRICT
5750 ALAMADEN EXPRESSWAY
SAN JOSE, CA 95118

Subject: UPPER GUADALUPE RIVER FLOOD CONTROL PROJECT SCH #: 97022059

Dear DENNIS CHEONG:

The State Clearinghouse has submitted the above named draft Environmental Impact Report (EIR) to selected state agencies for review. The review period is now closed and the comments from the responding agency(ies) is(are) enclosed. On the enclosed Notice of Completion form you will note that the Clearinghouse has checked the agencies that have commented. Please review the Notice of Completion to ensure that your comment package is complete. If the comment package is not in order, please notify the State Clearinghouse immediately. Remember to refer to the project's eight-digit State Clearinghouse number so that we may respond promptly.

Please note that Section 21104 of the California Public Resources Code required that:

> "a responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency." 1-1

Commenting agencies are also required by this section to support their comments with specific documentation.

These comments are forwarded for your use in preparing your final EIR. Should you need more information or clarification, we recommend that you contact the commenting agency(ies).

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact Kristen Derscheid at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Antero A. Rivasplata

ANTERO A. RIVASPLATA
Chief, State Clearinghouse

Enclosures
cc: Resources Agency

Notice of Completion

Form A

SCH # 97022059

Mail to: State Clearinghouse, 1400 Tenth Street, Sacramento, CA 95814 916/445-0613

Project Title: Upper Guadalupe River Flood Control Project

Lead Agency: Santa Clara Valley Water Dist.

Contact Person: Dennis Cheong

Street Address: 5750 Almaden Expressway

Phone: 408/927-0710 ext 2618

City: San Jose

Zip: 95118

County: Santa Clara

Project Location

County: Santa Clara

City/Nearest Community: San Jose

Cross Streets: ______

Zip Code: ______

Total Acres: ______

Assessor's Parcel No. ______

Section: ______

Twp. ______

Range: ______

Base: ______

Within 2 Miles: State Hwy #: ______

Waterways: ______

Airports: ______

Railways: ______

Schools: ______

Document Type

CEQA:
- ☐ NOP
- ☐ Early Cons
- ☐ Neg Dec
- ☒ Draft EIR
- ☐ Supplement/Subsequent
- ☐ EIR (Prior SCH No.) ______
- ☐ Other ______

NEPA:
- ☐ NOI
- ☐ EA
- ☒ Draft EIS
- ☐ FONSI

Other:
- ☒ Joint Document
- ☐ Final Document
- ☐ Other ______

Local Action Type

- ☐ General Plan Update
- ☐ General Plan Amendment
- ☐ General Plan Element
- ☐ Community Plan
- ☐ Specific Plan
- ☐ Master Plan
- ☐ Planned Unit Development
- ☐ Site Plan
- ☐ Rezone
- ☐ Prezone
- ☐ Use Permit
- ☐ Land Division (Subdivision, Parcel Map, Tract Map, etc.)
- ☐ Annexation
- ☐ Redevelopment
- ☐ Coastal Permit
- ☐ Other ______

Development Type

- ☐ Residential: Units ______ Acres ______
- ☐ Office: Sq.ft. ______ Acres ______ Employees ______
- ☐ Commercial: Sq.ft. ______ Acres ______ Employees ______
- ☐ Industrial: Sq.ft. ______ Acres ______ Employees ______
- ☐ Educational ______
- ☐ Recreational ______
- ☐ Water Facilities: Type ______ MGD ______
- ☐ Transportation: Type ______
- ☐ Mining: Mineral ______
- ☐ Power: Type ______ Watts ______
- ☐ Waste Treatment: Type ______
- ☐ Hazardous Waste: Type ______
- ☐ Other: ______

Project Issues Discussed in Document

- ☐ Aesthetic/Visual
- ☐ Agricultural Land
- ☐ Air Quality
- ☐ Archeological/Historical
- ☐ Coastal Zone
- ☐ Drainage/Absorption
- ☐ Economic/Jobs
- ☐ Fiscal
- ☐ Flood Plain/Flooding
- ☐ Forest Land/Fire Hazard
- ☐ Geologic/Seismic
- ☐ Minerals
- ☐ Noise
- ☐ Population/Housing Balance
- ☐ Public Services/Facilities
- ☐ Recreation/Parks
- ☐ Schools/Universities
- ☐ Septic Systems
- ☐ Sewer Capacity
- ☐ Soil Erosion/Compaction/Grading
- ☐ Solid Waste
- ☐ Toxic/Hazardous
- ☐ Traffic/Circulation
- ☐ Vegetation
- ☐ Water Quality
- ☐ Water Supply/Groundwater
- ☐ Wetland/Riparian
- ☐ Wildlife
- ☐ Growth Inducing
- ☐ Landuse
- ☐ Cumulative Effects
- ☐ Other ______

Present Land Use/Zoning/General Plan Use

State Clearinghouse Contact: Ms. Angel Howell
(916) 445-0613

State Review Began: 2.24.97

Dept. Review to Agency 4.3

Agency Rev to SCH 4.8

SCH COMPLIANCE 4.10

Please note SCH Number on all Comments
97022059

Please forward late comments directly to the Lead Agency

AQMD/APCD ___ (Resources: 3/1)

97022059

Project Sent to the following State Agencies

X Resources
___ Boating
___ Coastal Comm
___ Coastal Consv
___ Colorado Rvr Bd
___ Conservation
X Fish & Game # 3
___ Delta Protection Commission
___ Forestry
___ Parks & Rec/OHP
X Reclamation
X BCDC
X DWR
___ OES
___ Bus Transp Hous
___ Aeronautics
___ CHP
X Caltrans # 4
___ Trans Planning
___ Housing & Devel
___ Health & Welfare
___ Dept. of Health
___ Medical Waste
___ State/Consumer Svcs
___ General Services
___ Cal/EPA
___ ARB
___ CA Waste Mgmt Bd
___ SWRCB: Grants
___ SWRCB: Delta
X SWRCB: Wtr Quality
___ SWRCB: Wtr Rights
X Reg. WQCB # 2
___ DTSC/CTC
___ Yth/Adlt Corrections
___ Corrections
___ Independent Comm
___ Energy Comm
X NAHC
___ PUC
___ Santa Mn Mtns
X State Lands Comm
___ Tahoe Rgl Plan
___ Other: ______

COMMENT LETTER 2

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213
TEL (310) 980-4000; FAX (310) 980-4018

April 22, 1997 F/SWO22:IG

Mr. Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA. 95118

ORIGINAL DOCUMENT IN FILES

Dear Mr. Neudorf and Mr. Cheong:

Thank you for the opportunity to comment on the January 1997, Santa Clara Valley Water District's (District) Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) for the Upper Guadalupe River Flood Control Project and the Engineer's Report for a proposed project on the Guadalupe River. The DEIS/EIR addresses proposed channel modifications to the Upper Guadalupe River (upstream of Interstate 280 to Blossom Hill Road), Ross Creek, Canoas Creek, and the Guadalupe River (between Interstate 101 and Interstate 280), in the city of San Jose, Santa Clara County. We also appreciate the opportunity to inspect the Project site on March 31, 1997.

As described in the DEIR/EIS, The Upper Guadalupe River Flood Control Project (Project) is a proposed action to:

1) Reduce damage to people and property as a result of flooding along the Upper Guadalupe River, Ross Creek, and Canoas Creek by implementing channel modifications designed to convey the anticipated 100-year flow;

2) Reduce bank erosion and sedimentation - related impacts along the upper Guadalupe River and its tributaries;

3) Provide for long-term riparian habitat improvement to offset impacts that result from the construction of the flood control facilities.

General Comments

Alternatives

The Project preferred alternative could reduce the impacts to the riparian community and indirectly to the overall river by incorporating several portions of the Minimize Vegetation Impact 2-1 alternative. This would eliminate some of the extensive areas dedicated to one-bank widening, the formation of floodways, and the removal of much of the mature top of bank trees that contribute to the overall riparian forest community. This may reduce the impacts to the aquatic communities by minimizing 1) the amount of shade lost and 2) any increases in water temperatures until replanted vegetation becomes effective in shading the river.

Combining these alternatives may also eliminate problems from changes in the natural channel geometry and stream power. The system currently transports sediment effectively and maintains many of the large, deeper pools. These pools are critical for the adult salmonid populations in the urban area for escape and resting cover. Poaching is currently a problem. The potential changes of pool systems in the channel may force adult fish to congregate in fewer pools and be more susceptible to poaching. Including additional bypasses in lieu of floodway may increase the need to buy additional property. This would increase the socioeconomic impacts, but the District stated that they could mitigate this through relocation and assistance programs.

2-1 The Minimized Vegetation Impact alternative as stated in the DEIS/EIR pg. 3-1, would avoid many of the impacts on the riparian corridor along the upper Guadalupe River. This alternative meets the primary objective of avoidance. Mitigation would still be required to minimize and/or compensate for impacts of the project. In the long term, avoidance of environmental impacts would be a benefit to fish and wildlife, the public, and the District by reduced mitigation and monitoring responsibilities. Additionally, the Minimized Vegetation Impact alternative, under California Environmental Quality Act (CEQA) is the Environmentally Superior option.

Mitigation

The impact and mitigation analysis needs to be clarified. I believe that each impact should be accounted for individually and stated clearly on how and where mitigation will be accomplished. For example, several sections talk about riparian and Shaded Riverine Aquatic habitat (SRA) being combined into one mitigation plan, and that some plantings would provide compensation for more than one impact. Similarly, Plates V-41 through V-53 show "preliminary" areas of mitigation, yet they do not define areas of importance like SRA and undercut bank habitats. It should clearly and individually define mitigation for SRA, riparian, urban, wetlands, and trees protected by City Ordinance so there is no double counting of mitigation (one tree planted for two separate impacts).

2-2

A specific distinction needs to be made as to the relationship of mitigation for the adjacent Flood Control projects (Downtown Project and Upper River Project). The Downtown Guadalupe River Flood Control Project has yet to define the needed mitigation to fully compensate for the project. Several actions are identified as mitigation for the Downtown project and are also identified as mitigation in the Upper River Project (Reach 10b, 12, retrofit of the gabion structure on Alamitos Creek and barriers located between the off-site mitigation area for the Downtown project on Guadalupe Creek and the project site). One specific mitigation measure, laddering of the Alamitos Drop structure in reach 13, is documented as mitigation for the "Settlement Agreement"; it should not be included in this Project except perhaps as a cumulative impact.

Mitigation Banking

The DEIR/EIS states that the District will be developing a mitigation bank for riparian and SRA habitat, (5.43 acres and 5,779 linear feet, respectively) on the Guadalupe River. Once again the mitigation concept needs to be clear and determined before the project is approved. No definitive areas are identified for the mitigation bank associated with the Upper Guadalupe project, and no defined areas of SRA are identified. The Maintenance program mentioned in the DEIR/EIS is only a concept that is not adequately defined to allow evaluation by NMFS. 2-3

Cumulative Impacts

The Cumulative Impact section needs to identify all associated impacts to the Guadalupe River Watershed, not just the large projects. Many small projects can be significant, collectively. The Maintenance program EIR (sediment removal, erosion and vegetation control) could have significant cumulative impacts (8,000 linear feet and 4.0 acres of potential "hard scape"erosion control within the project over the 100-year life). The Spreader Dam EIR was also not included in this section. The mitigation measure for cumulative impacts, Cf-1, is being considered part of the Downtown project mitigation and needs to be explained in relation to the Downtown project. 2-4

Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires federal agencies, in consultation with the Secretary of the Interior and Secretary of Commerce, to ensure that their actions do not jeopardize the continued existence of the endangered or threatened species, or result in the destruction or adverse modification of the critical habitat of these species. The DEIR/EIS states that there are no listed or proposed species that would be affected. On August 9, 1996 (61 FR 41541), the National Marine Fisheries Service issued a proposed rule for West Coast steelhead trout (*Oncorhynchus mykiss*) and designated several Evolutionarily Significant Units (ESU) within California. The Upper Guadalupe River project falls within the - Central California Coast Steelhead ESU - proposed as endangered - and therefore this portion of the DEIR/EIS will need to be updated and addressed appropriately. In addition to the proposed steelhead rule, NMFS is conducting a status review on all unlisted species of chinook salmon (*Oncorhynchus tschawytscha*), which includes chinook salmon identified in the Guadalupe River and Coyote Creek Watersheds. 2-5

Construction Schedule

The current construction schedule, pg. 3-44, indicates that the project will extend to the year 2023. However, as indicated under footnote number 1, there is no current federal funding and the "benefit assessment" funding sunsets in the year 2000. The District should show how the project will be funded under the different conditions (with federal funding, with federal funding and current benefit assessment rate beyond the year 2000, without federal funding and current benefit assessment rate beyond year 2000, and without federal funding and without benefit assessment rate beyond year 2000). 2-6

Volume II (Plate Volume)

2-7 The Plate Volume (Volume II) will need to be refined to show the actual mitigation sites (Mitigation banking, undercut bank, Shaded Aquatic Riverine cover habitat, areas dedicated to the Downtown project and "other projects"). During a field visit on March 31, several locations were described differently than what is shown in the plate volume. Areas of floodway and bypass channels were not clearly defined and were presented differently during the field visit.

This concludes my general comments on the documents. Please refer to the enclosed Specific Comments for information that will clarify or further support my General Comments. If there are any questions about the above comments, please contact Mr. Ian Gilroy of my staff at 707-575-6053 or by e-mail at Ian.Gilroy@noaa.gov.

Sincerely,

James R. Bybee

James R. Bybee
Environmental Coordinator
Northern Area

Enclosure

National Marine Fisheries Service
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404

April 22, 1997

Attachment 1

Specific Comments on the Santa Clara Valley Water District's Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) for the Upper Guadalupe River Flood Control Project and the Engineer's Report for a proposed project on the Guadalupe River.

Specific comments

pg. 1-6, "in some cases, more than one impact can be mitigated by a single mitigation measure ......" This suggests that a tree can be planted and counted as SR A, riparian forest, and Heritage tree mitigation. I believe that these impact mitigation measures need to be independent of each other and systematically accounted for with no overlap. 2-8

pg. 1-15 Table 1.2, Fisheries Mitigation states "F-1 Construct undercut banks on site, Replace SRA, and Improve fish passage on Guadalupe Creek." If Guadalupe Creek and its associated passage problems upstream are used to mitigate for the Downtown Guadalupe project, then the portion about improving fish passage conditions on Guadalupe Creek needs to be explained in detail on how it applies. 2-9

pg. 1-18 Table 1.2, Cumulative impacts - Fisheries - states "Cf-1 Provide for fish passage on Alamitos Creek and monitor for the presence of native fish." If fish passage on Alamitos Creek (the gabion partial barrier) is to be used for the Downtown project then this mitigation measure needs to be explained in detail. 2-10

Pg. 1-21 Last Paragraph, "Mitigation measures for cumulative impacts on fisheries require the District to install fishways on its drop structure upstream of Blossom Hill Road and provide for fish passage at Masson Dam on Guadalupe Creek and the gabion structure on Alamitos Creek upstream of Mazzone Drive". These need to be explained in detail since they are identified as mitigation for the Downtown project and as part of the Settlement Agreement. 2-11

Pg. 2-6 Table 2.1, add National Marine Fisheries Service (NMFS) to the list of agencies, ESA responsibilities, conference under ESA regarding the 2-12 proposed listing of Central Coast steelhead ESU as endangered.

2-13 Pg. 3-5 The statement - "It is also uncertain whether this alternative would comply with the requirement of the Clean Water Act Section 404 (b)(1) guidelines for implementation of the less environmentally damaging practicable alternative........". This is also mentioned on pg. 3-12. Even though the context here is under the "Stream Restoration Alternative" this suggests that the Minimized Vegetation Impact alternative should be the selected project rather than the Preferred alternative, for both the Clean Water Act and CEQA.

2-14 Pg. 3-12 3.3 Preferred project - "Fisheries impact mitigation activities are proposed in Reach 13, upstream of Blossom Hill Road." This needs to be explained in detail as the proposed mitigation measures have already been assigned to the "Settlement Agreement " and to the Downtown project.

2-15 Pg. 3-24 Table 3.4, asks for "quadruple-cell 20 by 17 foot RCB culvert" at the SPRR crossing, but at the UPRR crossing only a " triple-cell 20 by 17 foot RCB culvert" is needed. This indicates a significant flow difference, yet there is no tributary inflow between the two sites (~4000 feet). The difference needs to be explained.

2-16 Pg. 3-40 Second paragraph under Reach 12, "The Branham gravel dam.........water surface elevations, respectively." This paragraph needs to be deleted as there is no project or permit in place that allows for these dams. Additionally, there would be no loss of in-stream recharge potential as there is no project or permit for the gravel dams.

2-17 Pg.3-41 Reach 13, "Construction of a step - pool ladder..... (see Settlement Agreement)." This needs to be explained in detail as the fishway at the drop structure is mitigation for a violation/dispute with California Department of Fish and Game that occurred in 1994 and was settled on August 8, 1996.

2-18 Pg.3-42 Limit In-channel Construction to Summer low precipitation period. The sentence, "Construction outside......can commence before June 1 only if field surveys...... Add "by a qualified fisheries biologist".

2-19 Pg. 3-43 Under - Construction schedule, the District plans to construct reaches 6 and 12 during the first year. Reach 12 is identified as part of the mitigation for the Downtown project, therefore the sentence should not include the word "substantial". There also appears to be a problem with funding as there is no defined funding for the entire project.

The statement "Because of the uncertain construction schedule, the District has provided interim remediation for partial barriers to fish passage at Stream Gage Station No. 23." needs to be changed. First, the project at Stream Gage Station (SGS) 23 complied with political pressure by local groups and CDFG, not by an uncertain construction schedule. Second, what are the "barriers" at SGS 23? 2-19

Pg. 3-44 Table 3.5 needs to be updated. The items listed under the footnote "2" are part of the Downtown project mitigation or part of the Settlement Agreement and should not be part of the Upper Guadalupe project. 2-20

Pg. 3-45 Under Routine Maintenance Procedures, the last sentence states "The impact analysis assumes this program will be implemented." The forementioned maintenance project is only a concept being developed by the District. Assuming that the maintenance project will be implemented is a major assumption and needs to be reconsidered. An alternative maintenance plan should be developed since current maintenance procedures reduce or eliminate the types of vegetation that provide SRA habitat. 2-21

Pg. 3-46 The section on mitigation banking is not consistent. The first paragraph states that 160 linear feet and 0.08 acres, on the average would be affected, and that the affected area would decrease due to the use of "hard scape". The second paragraph states that 80 linear feet (0.04ac) per year of "hard scape" would be placed over the life of the project. The life of the project is 100 years, so it is assumed that 80 linear feet of SRA will be removed from the river corridor each year for 100 years. This totals 8,000 linear feet alone. There are many other areas that may be affected which will increase the linear feet of impact. The first paragraph indicates linear feet and acres, yet the rest of the discussion equates linear feet to acres. The discussion should state that there is a potential to affect 16,000 linear feet and 8.0 acres, of which 8,000 linear feet and 4.0 acres would be permanently lost over the next 100 years. Additionally, the permanent loss of SRA linear feet and acres for entrance and exits for bypass channels and the floodways needs to be added to the Projects total. 2-22

This section also states that the mitigation bank is expected to mitigate for other District projects in addition to the project. This needs to be clarified (and justified) as to whether the mitigation bank would include projects like the Downtown project, the Maintenance program, and/or other Projects. 2-23

Pg. 3-49 "Settlement Agreement". It needs to be clear that this agreement mitigates for past actions by the District and is no longer a part of this project. The section states that there is not a 12-foot drop structure on Alamitos Creek, 2-24

2-24 but there is a 15-foot drop structure on Guadalupe River and that it is part of the project. These structures are one and the same.

2-25 Pg.3-50 "Benefits to the project", second paragraph. This paragraph needs to be clarified, describing which project the benefits are for. Removing potential fish barriers is identified as part of the proposed mitigation package for the Downtown project if Guadalupe Creek is to be used as part of the Downtown mitigation. Stream Gage Station 23b has already been modified for interim fish passage until it is completely removed by the Project.

2-26 The fourth paragraph, Pg. 3-51, needs to be reworded to reflect that several projects (the Downtown, the Upper River, and the Settlement Agreement) would provide an additional 19 miles of available fish habitat for anadromous fish.

2-27 Pg. 4.2-3 The Historic Stream Channel section should be included in the cumulative impact section. The cumulative section should include all of the historic changes as well as the impacts from the project and any proposed or planned projects in the future.

2-28 Pg. 4.3-1 Water Quality. This section fails to include the impacts to water temperature. Significant amounts of riparian and urban forest will be removed in the development of the floodways, and it is expected that there will be a significant change in temperature due to the loss of shade. The District has current temperature data which should be included in the pre-project description. This will allow pre-project temperatures to be compared to post-project temperatures. I am concerned that the Project will not be able to mitigate for the anticipated increase in temperature.

2-29 The second paragraph is very misleading. The statement that the water is nearly saturated with DO needs to be clarified. The measurement of water quality at the described location would lead to the conclusion that DO stream-wide is saturated. This location is a weir where water plunges into a pool, only aerating the water locally.

2-30 The statement of range of the NTU's needs to be modified. The high of 17 NTU is not correct. A high of 800 NTUs was recorded on February 19, 1980, in Table 4.3-1. Many other recorded observations were well above the quoted high of 17 NTUs.

2-31 Pg. 4.12-5 Riparian forest - The description of riparian forest should include a section on SRA. Apparently, the District includes SRA in the riparian forest habitat type, yet fails to identify that portion of the habitat in this discussion.

Pg.4.12-32 Shaded Riverine Aquatic Habitat, states that SRA will be planted in narrow strips next to the low flow channel and on floodway terraces that would be kept clear of woody vegetation. If plantings are to be SRA and maintenance is to prevent woody vegetation, then what is the purpose of planting trees that are to reach heights over ten feet and then cut them down for maintenance? This needs to be looked at as the mitigation plantings will never reach the size needed to shade the river (or reach the maturity of the original trees, hence no in-kind mitigation). These plantings would either not qualify as SRA mitigation, or if allowed, would need to be quantified at a much reduced ratio than 1:1. 2-32

Pg.4.14-1-4.14-47 The section on Fisheries will need to be updated and changed to reflect the mitigation responsibilities of the Settlement Agreement, the Downtown project, and the Upper River project. The subject of gravel dams and in-stream recharge needs to be addressed as there is no current project or permit application. This should be done in the cumulative impact section under future planned projects. 2-33

The fisheries benefits that are provided by the project need to be re-considered since most of the proposed benefits are from other projects and their associated mitigation.

Please address the impact of the entrance and exits of the bypass channels. The document states that the entrances and exits would be ramped up and down. This impact has an area and linear feet associated with permanent removal of SRA, undercut banks, spawning gravel deposition, and rearing habitat. 2-34

Please address the impact of channel widening with respect to stream power, pool formation, and sedimentation. Currently the channel supps many long pools that provide essential cover in an urban setting. These pools cold be filled in as the stream channel is widened and stream power is diminished. Even with no active work in the low flow channel (widening with floodways) the river will allow for different velocity patterns and deposition/scour potentials. At the field inspection of the proposed project on March 31, 1997, the District stated that the floodways and bypass channels would be inundated several times each year. These are the flows that move sediment and form the dynamic and diverse intra-channel habitats. If deposition occurs within the low flow channel, then the channel becomes aggraded, wider, shallower, and begins to meander, causing additional uncertainty of channel geometry. The statement that the 1.5-year recurrence flow is estimated at 1,200 cfs needs to be clarified. At what location does the 1.5-year flow equal 1,200 cfs? This should change while 2-35

2-35 moving downstream due to accretion of flows from urban run-off and increased tributary inflow.

2-36 Mitigation measure F-1 suggests that the undercut banks that are permanently lost will be mitigated by the creation of 1,720 linear feet of undercut bank habitat. I'm concerned that even though the document states that the District will mitigate, it does not indicate where in reaches 7, 10c, 11a, and 11b these mitigation sites will be located, or how this will be done if the river low flow channel is not to be impacted. Please clarify this and show all locations of undercut bank mitigation sites, and list additional impacts to the riparian habitat resulting from the construction of the undercut bank habitat.

2-37 I am concerned with the volume of vegetation associated with the channel that will be removed by the construction of the floodways. At the field visit, several locations were described as floodways where extensive top of bank (to unspecified elevation above the low flow channel) vegetation would be removed and mitigated at a different location. Cumulatively, throughout the whole project, there appears to be a reduction in the riparian forest adjacent to the active channel, thus leading to increased thermal heating and higher water temperatures overall. This is evident when examining the Visual/Aesthetic Resource section.

2-38 Pg.5-1 to Cumulative Impacts. This section needs to be revised to reflect the mitigation measures identified for the Downtown project and the Upper River project. Both mitigation measures f-1 and Cf-1 from the Upper River project are utilized as mitigation in the Downtown project. Table 5.5 shows all of the passage barriers to be removed. This would be a good location in the document to show which barrier removal is considered mitigation for which project.

2-39 Pg. 8-21 The mitigation measure V-2 clearly defines two types of separate mitigation areas, Riparian forest mitigation area and Shaded Riverine Aquatic habitat (SRA). This needs to be consistent throughout the document. At no other location in the document are there any specifics about what is riparian and what is SRA. Even the plate document does not show the differences between the two. This should be clearly shown and have different performance criteria associated with success.

2-40 V-3 mitigation ratios will need to be reviewed in light of planned future District activity on the erosion sites. As stated in the section on 3-46, the District plans to place "hard scape" in the erosion repair sites. This would preclude any future development of SRA adjacent to the stream channel. Mitigation ratios should be much higher if this is the course of action.

Pg8-27 Again, it is not clear where the mitigation for undercut banks would take place. On page 4.14-42, the discussion specifically identifies reaches for the mitigation of lost undercut banks. This section quotes different reaches than on pg. 8-27. This section needs to be clear as to where the mitigation will be placed. Also what mitigation (and at what ratio) will be completed to offset the additional loss of SRA and riparian that will be caused by the construction of undercut banks in reaches where the low flow channel would not be affected by flood control activities, yet would be removed to allow the development of the undercut bank mitigation. This should be clearly defined, described, and shown in the documents. 2-41

Pg. 8-33 Fisheries Cf-1a. This mitigation measure is identified as compensation for the Downtown project. This needs to be modified to describe the actual impact that is being mitigated by this measure. 2-42

COMMENT LETTER 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

April 18, 1997

4/25 orig RRTalley w/Att
Same to DW Cheong ''
JC Chen ''
JT Ferguson ''
GH Fowler ''
L Squires ''
SA [illegible]
P K [illegible]

Robert F. Smith
Regulatory Branch
U.S. Army Corps of Engineers
333 Market Street
San Francisco CA 94105

Dear Mr. Smith:

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (DEIS) and associated documentation (Executive Summary, Volume 3, and Engineer's Report) for the **UPPER GUADALUPE RIVER FLOOD CONTROL PROJECT, CITY OF SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA.** Our comments on the DEIS are provided pursuant to the National Environmental Policy Act (NEPA), Section 309 of the Clean Air Act, and the Council on Environmental Quality's Regulations for Implementing NEPA (40 CFR 1500-1508).

The Santa Clara Valley Water District (SCVWD) proposes to construct flood control facilities along the upper Guadalupe River to provide protection from 100-year and smaller floods. The Federal action is a permit decision by the Army Corps of Engineers under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The environmental documentation adequately demonstrates the need for the project through a good historic overview of flooding in the area. The project area is currently an open channel urban stream and includes two distinct segments of the river, one from State Route 101 to Interstate 880 and the second from Interstate 880 to Blossom Hill Road. Modifications are proposed on adjacent portions of two tributary creeks, Ross and Canoas. Proposed facilities include bypass channels, channel widening and benching, gabion-linings, bridge construction, and floodwalls and levees. The DEIS addresses in detail the environmental impacts of three alternatives: (1) the SCVWD's proposed action (Preferred Project); (2) a Minimize Vegetation Impacts Alternative; and (3) No Action. The DEIS briefly discusses a number of other action alternatives that were eliminated earlier in the screening process. 3-1

3-1 We have several concerns with the overall "structure" of the proposed project as well as with various elements of the proposal. For example, the DEIS limits the project's purpose to "flood control" rather than using this opportunity to develop a project which could achieve multiple beneficial environmental objectives while meeting the basic purpose of flood control. From that broad-based perspective, we encourage the Corps to re-examine and reconsider the Stream Restoration Alternative within a long-term context.

3-2 On a more elemental level (Preferred Project), our concerns include the lack of a full analysis of indirect and cumulative impacts; the need for an expanded discussion of wetland and riparian-related mitigation; the lack of a discussion of impacts associated with herbicide use; and the need to quantify air emissions associated with construction activities, which relates to the potential need for a conformity analysis by the Corps pursuant to the Clean Air Act. We also believe that the project can be improved and strengthened by adopting pollution prevention measures in design, construction and operation of the flood control facility.

3-3 These issues, which are expressed in greater detail in the attached comments, form the basis for our rating of EC-2, Environmental Concerns - Insufficient Information. Please refer to the attached "Summary of Rating Definitions and Follow-Up Action" for an explanation of EPA's rating system.

We appreciate the opportunity to comment on the DEIS. Please send one copy of the Final Environmental Impact Statement (FEIS) to me (mailcode: CMD-2) at the letterhead address when it is filed with EPA's Washington, D.C. office. If you have any questions, please call David Tomsovic of my staff, 415-744-1575.

Sincerely,

David Farrel, Chief
Federal Activities Office

Attachments: 3
- (a) Summary of Rating Definitions and Follow-Up Action
- (b) EPA's comments on DEIS
- (c) Flood control pollution prevention checklist

cc: Janice Gan, F&WS, Sacramento
Ian Gilroy, NMFS, Santa Rosa
Loretta Barsamian, RWQCB, Oakland
Randall Talley, SCVWD, San Jose

M.I. #1061

SUMMARY OF RATING DEFINITIONS AND FOLLOW-UP ACTION

Environmental Impact of the Action

LO-Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of environmental quality, public health or welfare. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommend for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1-Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From: EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."

I) BIOLOGICAL RESOURCES AND CLEAN WATER ACT (CWA) SECTION 404

A) Introduction: The upper Guadalupe River system has significant riparian cottonwood-sycamore forest associated with it and contains valuable fisheries such as steelhead trout and chinook salmon. The riverine system has many hydrologic, biogeochemical and habitat functions. Such habitats and functions are increasingly important in urban areas such as San Jose. We appreciate the efforts of the Santa Clara Valley Water District (SCVWD) to avoid project-related impacts to wetlands (a wetlands loss of 1.75 to 1.85 acres is detailed in the DEIS). Most of the project-related impacts to the riverine system are in waters of the United States (7.64 to 10.16 acres) or associated habitats that are outside Section 404 jurisdiction.

3-4 We are concerned that the impact documentation essentially addresses only one issue (flood control) rather than taking a multi-objective approach to the problem. We believe that by improving and restoring stream conditions to a more natural, less manipulated condition, the Army Corps and the SCVWD could secure a variety of objectives in addition to flood control, such as improved groundwater recharge and improved fishery and wildlife conditions. We believe that the impact analysis does not fully consider the overall functioning of the upper Guadalupe system. Although short-term impacts to habitat are avoided with the Preferred Project, there is but limited discussion of the river's long-term viability. This is of particular concern because the Army Corps and the SCVWD eliminated a river restoration alternative from detailed consideration in the DEIS. The DEIS did not look at the functions of the riverine system that may be potentially affected by the flood control project. Potential functions that may be affected include dynamic surface water storage, long-term surface water storage, nutrient cycling, energy dissipation, maintenance of characteristic plant communities, habitat spatial structure and habitat connectivity.

3-5 B) Alternatives Analysis: Only two action alternatives were analyzed in detail, the Preferred Project and the Minimize Vegetation Impacts Alternative (MVIA). A stream restoration alternative was rejected because of the "substantially greater short-term impacts on vegetation and the high costs of right-of-way acquisition" and "significant uncertainty" about mitigation requirements (DEIS, p. 3-1). The restoration alternative would presumably allow the river to function more naturally. EPA was not consulted on issues associated with the "significant uncertainty" of the mitigation for the Stream Restoration Alternative. We recognize that the restoration alternative may have greater short-term impacts to riparian and wetland vegetation, but a more detailed discussion of the restoration alternative may demonstrate that the river's long-term functions and viability could be enhanced. We recommend that the FEIS include a full analysis of the Stream Restoration Alternative.

In your analysis of the Stream Restoration Alternative, we suggest that the Corps and the SCVWD compare and contrast the various costs associated with the alternatives over the life of the project, including right-of-way acquisition costs and long-term maintenance costs. Maintenance costs associated with a bypass channel (armoring, vegetation clearing), channel widening (shoring up crib walls, replacing eroding banks, maintaining appropriate vegetation on benches) and fish mitigation (maintaining fish ladders) over the life of the project may prove to be greater than the cost of purchasing homes adjacent to the river and designing a river needing minimal maintenance. We recommend that the FEIS compare the total cost of each alternative over the entire life of the project to the Preferred Project. 3-5

C) Indirect or Secondary Impacts: The DEIS lacks a substantive description of the potential indirect (secondary) impacts that may occur. It assumes that the Preferred Project will result in long-term improvements to the riparian system. This analysis is premised on the assumption that by restricting the flow in the river to the bankfull stage, it will reduce the impacts to riparian and wetland habitats resulting from flood events. However, riverine systems are dynamic ecosystems that depend on flood events to function. One function that may be lost from preventing flood events is re-establishment of new vegetation. The existing trees may last longer (even if the remaining trees are weaker) but this may prevent new generations from becoming established. This phenomenon occurs in much of the Sacramento River area where flood flows have been reduced. 3-6

The Preferred Project and the MVIA include numerous by-pass channels. Typically, by-pass channels are preferred because they avoid impacts to existing stream channels and vegetation. However, there are secondary effects associated with by-pass channels that are not considered in this DEIS.

By-pass channels require extensive armoring where they enter and exit natural stream channels. Bypasses change the water velocity, which may alter sediment distribution and perhaps lead to changes in hydrology and associated riffle and pool complexes (a special aquatic site under Section 404). This potential change may also impact fisheries habitat. Areas where a channel is benched out may spread the water's velocity and may result in the loss of deep water habitat. 3-7

The more by-passes (as in the MVIA), the greater the impact on stream channels. The current design for the by-passes is conceptual and actual acreage impacts are not in the DEIS. Greater specificity is needed to determine the total range of impacts and appropriate mitigation. The longer by-pass options will have elevation changes of 4-5 feet (approximately above bankfull). Bankfull will change along the river and the exact 3-8

3-8 impacts of the by-passes have not been described. The shorter by-pass channels (for the MVIA) have elevation gains or losses of 7-8 feet. Armoring a channel (gabions, rock, rip-rap) can lead to cumulative impacts by transferring the energy of the water to opposite stream banks and/or other areas of the channel, which further increases the need for more hard improvements and limits the opportunity to establish natural vegetation communities. Such potential secondary impacts were not evaluated. In addition, once the bypass channels are more fully formulated, more natural options and biotechnical armoring methods should be explored by the Army Corps and the SCVWD.

3-9 Lastly, there are different concepts and terms for the bypass channel that have not been fully defined and may have varying impacts (e.g., bench, floodway, bypass channel). They will serve different uses and require different maintenances activities. For example, the floodway will need to be maintained free of vegetation and operate as a maintenance road in the dry season. The potential habitat functions of this approach will be less than for a true by-pass channel where vegetation is allowed in the channel (up to 10 feet). Similarly, areas where the channel is widened have only been conceptually described. In some areas there will be a bench, in other areas a maintenance road, and in other areas a crib wall. The loss of vegetation and the creek's alignment will vary with approach. These need to be clearly described. Also, a linear acreage of the creek channel lost from the entrance and exit of each by-pass channel should be determined.

3-10 D) Maintenance: For some reaches, routine maintenance impacts are addressed in the DEIS. For other reaches, the impacts of routine maintenance are deferred to the ten-year maintenance permit which has yet to be developed. We recommend that channel maintenance activities be disclosed for the entire project area and mitigated as part of project implementation. A maintenance work plan for the life of the project should be included as part of this EIS and mitigation for projected maintenance impacts should be defined and implemented as part of this project. Appropriate commitments should be in the ROD.

3-11 E) Mitigation: Riparian forest would be replaced at a 2:1 ratio, resulting in a "substantial net gain" in the amount of riparian forest in the area. The Summary (p. ES-27) states that the Preferred Project would mitigate impacts to wetlands, other waters of the United States and urban forest on a 1:1 ratio (no net loss), in kind, within the project area. We support a minimum 2:1 mitigation ratio for riparian forest and strongly encourage the Army Corps and the SCVWD to adopt, at a minimum, a similar 2:1 ratio for impacts to wetlands, others waters and urban forest as well. We believe that, if possible, mature trees should be carefully removed and transplanted in the new mitigation area(s) rather than replacing them with cuttings.

We recommend that the mitigation be more clearly defined for the wetlands and the riparian forest, and include a distinction as to which is shaded-riverine and which is riparian habitat. Also, a mitigation and monitoring plan is needed to ensure adequate compensation for lost habitat functions, both in terms of direct and indirect impacts as well as permanent and temporary impacts. The actual design of the Preferred Project and the level of mitigation to be carried out are in need of clarification. It is unclear to us what mitigation is being counted for the Downtown Project and which mitigation is for this project. Lastly, given the uncertainty of project funding and the long timelines for this project (20-25 years), it is unclear whether specific mitigation components will actually be realized. Lastly, we are concerned that maintenance activities (e.g., herbicide use) will continue to occur along streambanks where mitigation sites may be. This is not a preferred practice at mitigation sites and we recommend that it be avoided, or the mitigation ratio be greater than that presented in the DEIS, to compensate for potential adverse impacts to mitigation areas. 3-11

F) Least Environmentally Damaging Practicable Alternative (LEDPA): The DEIS does not indicate which of the two action alternatives analyzed in detail is considered by the Army Corps to be the Least Environmentally Damaging Practicable Alternative, pursuant to CWA Section 404(b)(1). The Executive Summary (pp. ES-19 and ES-20) states that the MVIA would have "substantially less" impacts on vegetation and wildlife than the Preferred Project, results in less riparian forest fragmentation, and has less impact on fisheries. Table 4.12-8 in Volume I shows that impacts to jurisdictional wetlands are nearly identical, 1.85 acres for the Preferred Project and 1.75 acres for the Minimize Vegetation Impacts Alternative. The Preferred Project would have greater impacts on other waters of the United States (10.16 acres) compared to the MVIA (7.64 acres). 3-12

However, the DEIS does not clearly portray the indirect and cumulative impacts over the life of the project as clearly as it portrays the direct impacts. In terms of cumulative impacts, the documentation contains little analysis of impacts that may affect similar habitats in the upper Guadalupe watershed. In particular, it did not discuss riparian habitat lost due to the Downtown Project (that portion of the Corps' previous flood control project); does not discuss other projects underway within the SCVWD's jurisdiction that may impact such habitats such as the SCVWD's spring 1996 permit application for bank stabilization efforts; and does not clearly portray potential impacts associated with future maintenance work. 3-13

Because of this lack of information on indirect and cumulative effects, it is difficult to determine which of the two action alternatives is the Least Environmentally Damaging Practicable Alternative (LEDPA) for purposes of Section 404. 3-14

3-14 We recommend that the FEIS identify which of the action alternatives is the LEDPA for purposes of Section 404, taking into account all reasonably foreseeable direct, indirect and cumulative impacts for the life of the project. Should the Army Corps and the SCVWD analyze the Stream Restoration Alternative and/or other action alternatives in greater detail in the FEIS, habitat impacts by acreage for this alternative should be portrayed as well, as part of identifying the LEDPA.

II) HERBICIDES

3-15 A) NEPA Public Disclosure: According to the DEIS, project construction and maintenance would result in an increase in herbicides use to control vegetation. While the Executive Summary states that this increased use "should not result in significant adverse water quality impacts," it is appropriate, in the context of NEPA, to be as definitive as possible in drawing conclusions such as this. In that respect, we recommend that the FEIS should indicate whether increased use of herbicides would or would not result in significant adverse water quality impacts.

The Engineer's Report contains numerous references to herbicide use which advise the public that use of herbicides would be an integral component of this project. However, the public is not informed of the nature of the herbicides nor the environmental consequences of the use of herbicides. For example, the DEIS does not disclose what herbicide(s) might be used; how frequently they would be used; what impacts might be associated with herbicides use such as uptake by plants, fish and other organisms; what mitigation measures would be adopted by the SCVWD to avoid adverse impacts to water quality, nontarget species, wildlife, fisheries and public health; and whether the Army Corps and the SCVWD evaluated any non-herbicide alternatives that may be reasonable for purposes of NEPA analysis. This information should be contained in the FEIS.

Additionally, the DEIS did not indicate whether the SCVWD would notify the potentially affected public before using herbicides. We strongly encourage the SCVWD to consider a public information/notification strategy. Posting areas of herbicide use to inform people of potential risks due to exposure may also be an appropriate strategy. Because of the close connection of the area's residents to the river, we strongly recommend that herbicide use postings be in the language(s) common to area residents. Commitments regarding the use of herbicides, including public notification provisions, should be in the Record of Decision (ROD).

3-16 B) Herbicides, Water Quality & Clean Water Act Requirements : The Water Quality Control Plan (Plan) provides that "All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms...." The Plan also provides that there shall be no chronic toxicity in ambient waters.

The DEIS contains no reference about whether the use of herbicides will adhere to requirements found in the Plan except to say (p. ES-22) that "increase[d]...use of herbicides should not result in significant adverse water quality impacts." The FEIS should discuss whether the increased use of herbicides would be in accord with the Plan and indicate whether herbicides would adversely affect existing or potential beneficial uses such as fish spawning and migration, protection of rare species, etc. We recommend that the Army Corps and the SCVWD contact the Regional Water Quality Control Board to ensure the project's consistency with the Plan's requirements on toxicity and herbicides. Appropriate mitigation measures to protect water quality and beneficial uses should be included in the FEIS and the ROD. 3-16

III) LEAD-BASED PAINT

The FEIS should discuss whether lead-based paint may prove to be an issue of concern during demolition activities, as asbestos was discussed. Consistency with applicable requirements on the management and disposal of waste containing lead-based paint should be demonstrated. The Hazardous Materials section of Table 1.2 (HM-3) should be amended as appropriate to reflect lead-based paint issues. Appropriate measures to protect public health and worker health and safety should be reflected in the FEIS and the ROD. 3-17

IV) AIR QUALITY CONFORMITY

The DEIS states that "information on construction equipment usages for the project are not available..." and that emissions from the transport of materials and project-related traffic congestion emissions "have not been quantitatively evaluated." We believe that the Army Corps of Engineers should assess whether a conformity determination needs to be conducted for carbon monoxide (CO) and two ozone precursors, nitrogen oxides (NO_x) and volatile organic compounds (VOCs)), since the Bay Area is a CO nonattainment area and an ozone maintenance area. EPA's final rule on general conformity is codified at 40 CFR Part 93, Subpart B. Under the general conformity rule, a project's construction-related emissions should be included in the calculations to determine the applicability of the rule to the proposed project. 3-18

- For CO nonattainment areas such as the Bay Area, a de minimus level of 100 tons per year of direct and/or indirect CO emissions from a Federally-approved project are required before a general conformity determination needs to be done by the lead Federal agency.

- The FEIS should also recognize that the Bay Area is

3-18 a maintenance area for ozone and that EPA's general conformity rule requires that a general conformity determination be prepared for emissions of NO_x and VOC should the 100 tons per year de minimis threshold be exceeded. By Federal Register notice published on 5/22/95, EPA redesignated the San Francisco Bay Area as an ozone attainment area under an approved ozone maintenance plan.

If the Corps determines that a general conformity determination is needed for the proposed project, the conformity determination should be circulated for agency review pursuant to 40 CFR 93.155 before or concurrent with the FEIS.

V) POLLUTION PREVENTION OPPORTUNITIES

3-19 The DEIS did not address pollution prevention mechanisms in the proposed project to the extent recommended in guidance issued by the Council on Environmental Quality (CEQ) (January 29, 1993 Federal Register, pp. 6478-6481). We believe that the proposed project could be strengthened by specifically designing and constructing the project with pollution prevention measures in mind. We have enclosed a pollution prevention checklist for your use. Although several items on the checklist have been included in the DEIS or may be inapplicable, other measures may be feasible as the project proceeds. We recommend that appropriate pollution prevention commitments be included in the FEIS and ROD.

VI) CONSTRUCTION SCHEDULE

3-20 Table 2 of the Summary (p. ES-17) depicts the scheduled construction of the Preferred Project for the various reaches of the upper Guadalupe River. Several of the construction phases are quite far in the future, e.g., Ross Creek construction from 2017-2018, Reach 11 construction from 2021-2023, and Canoas Creek construction from 2022-2023. It is safe to assume that various factors will change, perhaps significantly, in the next 20 to 26 years, including the environmental resources at risk from the project (e.g., new species listed under the Endangered Species Act), environmental standards (e.g., water quality standards) and possibly new or different legal requirements. Because of this, we believe that the FEIS and ROD should contain a clear commitment by the Corps that subsequent NEPA documentation will be prepared as each phase becomes ripe for implementation or if circumstances change substantially.

VII) EXECUTIVE ORDER 12898 (ENVIRONMENTAL JUSTICE FOR LOW INCOME AND MINORITY POPULATIONS)

3-21 The DEIS does not discuss the project's consistency with Executive Order 12898 (**Federal Actions to Address Environmental Justice in Minority Populations & Low-Income Populations,** February 16, 1994 Federal Register, pp. 7629-7633). We note on p. 4.6-5 of the DEIS that the remaining residents of the McLellan/Palm Street area who are subject to relocation are 69 per cent Hispanic, which may have implications under Executive Order 12898. 3-21

The FEIS should contain a discussion of Environmental Justice in consistence with the requirements of Executive Order 12898, the Corps' environmental justice strategy, and the CEQ's draft guidance for Federal agencies on implementing environmental justice considerations in NEPA documents.

VIII) EDITORIAL COMMENTS

1. Chapter 9, Agency Review & Consultation Requirements: This section lists various requirements applicable to the proposed project such as the Clean Water Act and the Endangered Species Act. We recommend the following modifications for this particular section of the EIS. 3-22

- the discussion on pp. 9-3 and 9-4 concerning the Clean Water Act should be modified to reflect that the project has to comply with the Water Quality Control Plan, developed by the State of California and approved by U.S. EPA under the Clean Water Act.

- No mention is made of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which regulates the proper handling, use and disposal of herbicides. Chapter 9 should be amended to reflect the need for the project's consistency with FIFRA and California's herbicide requirements. 3-23

- if Executive Order 12898 (Environmental Justice) is applicable, it should be added to the list. 3-24

2. Table 3 of the Executive Summary should be amended to reflect that stormwater approval is needed from the Regional Water Quality Control Board. 3-25

3. The DEIS (p. 4.9-1) notes that "The area is currently designated by the United States Environmental Protection Agency (EPA) as a non-attainment area for carbon monoxide." The sentence should be modified to read, "The area is currently designated by the United States Environmental Protection Agency (EPA) as a non-attainment area for carbon monoxide and a maintenance area for ozone." 3-26

POLLUTION PREVENTION/ENVIRONMENTAL IMPACT REDUCTION CHECKLIST FOR FLOOD CONTROL PROJECTS

How Can Flood Control Projects Affect the Environment?

Flood control projects can include channelization and channel modification activities and levee construction. Such activities can change the ability of natural systems to filter pollutants from surface waters; alter the rates and paths of sediment erosion, transport, and deposition; increase the movement of pollutants from the upper reaches of watersheds into coastal waters; lower dissolved oxygen levels; increase salinity in marshes; reduce freshwater availability; and accelerate the delivery rate of pollutants to downstream sites. Pollution prevention techniques can reduce or eliminate some environmental effects.

Also see checklists on Ecosystem Preservation and Protection, Siting, Building/Housing Construction, Dredging Projects, Dams, Hydropower, and Water Supply Reservoirs.

What Questions Should Be Asked To Ensure That These Effects Are Minimized or Eliminated?

Ecosystem Concerns

- Has the use of alternatives involving levee setbacks or the use of floodways been considered?
- Will the flood control project lead to land use changes in the watershed, particularly those changes that result in increased surface water runoff and nonpoint source pollution?
- Have modifications to existing flood control structures been evaluated to determine if they can eliminate the need for the new channelization or channel modification project?
- Have all environmentally sensitive areas been characterized? Have attempts been made to avoid construction in environmentally sensitive areas? *
- Does the project minimize construction parallel to rivers or streams to reduce the potential for direct runoff discharge from the roadway?
- Does the project make use of existing roadway alignments (if possible) to reduce the amount of waste generated as a result of clearing and construction activities?
- Has the project incorporated mitigation measures to reduce the impact of pollution runoff from the roadway? These measures may include stabilizing cut and fill slopes, shoulders, and medians with perennial vegetation and non-erosive materials, such as rip-rap or geotextiles, or establishing permanently controlled discharge points for storm water.
- Does the plan include native plant revegetation of areas disturbed by construction to minimize erosion and sedimentation?
- Have safe wildlife crossing structures and appropriate fencing been incorporated into the project to accommodate the movements and needs of resident wildlife and mitigate habitat fragmentation? *

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* Indicates an environmental impact reduction opportunity.

Project Design and Planning. Flood control projects can affect the physical characteristics of surface waters and modify in-stream and riparian habitat.

- Have alternatives, such as upstream watershed management and floodplain widening, been considered? *
- Are land use and agricultural practices, as well as their potential for contributing pollutants to surface waters, considered in channel design? *
- Will building be prohibited within a defined distance from the streambed to protect the streambank?
- Are streambank protection measures, such as stone riprap, vegetation, erosion control fabrics, cellular concrete blocks, and gabions, included in the design?
- Will levees and flood walls be sited outside riparian areas and wetlands?
- Are channel slopes graded so that animals can crawl or climb out? *

Construction. Construction activities for channel modification include vegetation clearing, soil and rock excavation and placement, equipment operations, and energy, water, and hazardous materials use, all of which can cause pollution. Effects on river and coastal area ecology from increased sediment loads and the release of hazardous constituents can occur during construction. Pollution prevention techniques can reduce or eliminate some pollutants.

- Will measures be taken to prevent surface water from entering construction areas?
- Will construction take place during dry seasons?
- Will site access routes and equipment storage areas be planned and located to minimize erosion potential? Will existing roadways be used to gain site access?
- Will construction workers be required to limit activities to designated, controlled areas to prevent vegetation destruction and soil disturbance? *
- Will secondary containment be provided in equipment fueling areas to control fuel spills? Is a spill control plan specified?
- Will access to materials and equipment storage areas be controlled and limited? Will material storage areas be covered? Will materials be ordered only when necessary to prevent inventory from expiring?
- Will the cleaning of construction equipment be conducted in a controlled area away from surface water? Will the washwater be prevented from entering the stream?

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* Indicates an environmental impact reduction opportunity.

- Will reclaimed and/or recycled construction materials be used, including aggregate, rebar, lumber, and asphalt? *
- Are alternative materials available to reduce hazardous and toxic materials use during construction?
- Will construction and storage areas be sited away from critical habitats? *
- Will biotechnical methods, such as vegetated gabions, be used to stabilize levee and channel banks?

Maintenance. Pollution prevention can reduce or eliminate the environmental effects of flood control project maintenance. Maintenance generally consists of vegetation management, burrowing animal control, upkeep of recreational areas, and levee repairs. In-stream and riparian habitats, which provide soil erosion protection, and pollutant filtering can be affected by maintenance activities.

- Will vegetation removal methods that use chemicals, grazing, or burning be prohibited? Chemical herbicide residuals and animal wastes can be washed into waterways during rainy periods. Burning can negatively affect air quality.
- Will burrowing animals be controlled by non-chemical means? Burrowing animals can affect the integrity of structures, leading to significant reconstruction requirements.
- Will native plant species be used for revegetation of disturbed areas? *
- Will marina fueling areas be regularly maintained and checked for leaks? Will boat owners be required to remove their craft from waterways before conducting engine and other boat repairs using hazardous materials?
- Will measures be taken to prevent downstream sediment loading during dredging operations?
- Will dredging spoils be evaluated for nutrient and contaminant content before they are applied to land areas? *

Other References

Federal Interagency Floodplain Management Review Committee. August 1994. "Sharing the Challenge: Floodplain Management into the 21st Century."

Federal Interagency Floodplain Management Task Force. 1992. "Floodplain Management in the United States: An Assessment Report."

U.S. EPA, Office of Water. January 1993. *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters.* 840-B-92-002.

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* Indicates an environmental impact reduction opportunity.

ORIGINAL [illegible]

COMMENT LETTER 4

DEPARTMENT OF DEFENSE
UNITED STATES OF AMERICA

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO
ATTENTION OF

SCVWD 1 APR 10 '97 AM 10:43

April 4, 1997

Civil Project Management Section

SUBJECT: Upper Guadalupe River Draft Environmental Impact Report/Environmental Impact Statement and Engineer's Report

Mr. Terry Neudorf
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

Dear Mr. Neudorf:

We have reviewed the subject reports and offer the following observations with respect to the downtown Guadalupe River project. A component of the proposed plan, Reach A (Highway 101 to I-880), consists of improvements to a reach of the Guadalupe River constructed by the Santa Clara Valley Water District in 1972. More recently, the District constructed levee and channel improvements downstream from Highway 101 to Alviso. The District was afforded a credit in the amount of approximately $5.2 million against the non-Federal share of the Guadalupe River project for this later work. You should be aware that the Guadalupe River project will not function as designed until construction is completed in the downtown project reach (I-280 to I-880) and inadequacies in channel capacity in the downstream reach (I-880 to Alviso) are corrected. 4-1

One of the requirements of local cooperation contained in the Local Cooperation Agreement for the Guadalupe River project signed on March 30, 1992, is that the District will insure that the "District channel improvements from Interstate 880 downstream to San Francisco Bay . . . are operated and managed in such a way to convey design floodflows." We have transferred completed project works (Contracts 1 and 2) to the District according to the Local Cooperation Agreement (Article VIIIa), and Code of Federal Regulations, Title 33, Part 208, Flood Control Regulations. Operation and maintenance requirements of this completed work, as well as the I-880 to Alviso reach, are described in detail in the Interim Operation and Maintenance Manual, which has been recently transmitted to your District. 4-2

It is imperative that your District proceeds with necessary channel improvements in Reach A on a schedule consistent with our schedule for completing construction of the downtown project. 4-3

Sincerely,

Lewis A. Whitney
Deputy District Engineer
for Project Management

STATE OF CALIFORNIA—THE RESOURCES AGENCY
PETE WILSON, Governor

DEPARTMENT OF FISH AND GAME
Post Office Box 47
Yountville, California 94599
(707) 944-5500

April 17, 1997

Mr. Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

Dear Mr. Neudorf:

Upper Guadalupe River Flood Control Project
Draft Environmental Impact Report/Environmental
Impact Statement and Engineer's Report
Santa Clara County

Department of Fish and Game personnel have reviewed the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) and the Engineer's Report for the Upper Guadalupe River Flood Control Project. The objectives of the proposed project are to provide protection from the one percent flood, control channel erosion and sedimentation, and improve future channel maintenance activities. The project consists of channel modifications along 8 reaches of the Guadalupe River, covering about 6.4 miles, in the city of San Jose. There are two discrete project segments, one from State Route 101 to Interstate 880 and another from Interstate 280 to Blossom Hill Road. Modifications also are proposed on adjacent portions of two tributaries, Ross Creek and Canoas Creek. Project features include bypass channels, channel widening and benching, gabion-lining, bridge and culvert construction, floodwalls and levees, a fishway at the Blossom Hill Dropstructure and implementation of a new channel maintenance program. 5-1

The Department recommends that the Board of Directors adopt the "Minimize Vegetation Impacts Alternative". This Alternative includes channel modifications that would provide an equivalent level of flood protection as the Preferred Project, but would result in fewer and less impacts to riparian vegetation, aquatic habitats, and the fish and wildlife dependent upon these valuable habitats. The "Minimize Vegatation Impacts Alternative" is the environmentally superior alternative.

Significance Criteria

The "Significance Criteria" on page 4.14-24 of the DEIR/EIS is inadequate and incorrect. As with federally listed and proposed species, any adverse impact on individuals of state listed species, candidate species and California Species of Special Concern must be considered a significant impact. The District must correct this deficiency and revise significance threshold assessments and determinations as appropriate to achieve compliance with CEQA Guidelines Sections 15065(a) and 15380(d) and the California Endangered Species Act. 5-2

Fish Passage

5-3 The designs for fish passage improvements and culverts must conform to engineering and construction specifications approved in writing by the Department prior to construction. Final designs may differ from those described in the Engineer's Report.

5-4 The proposed project includes removal of the abandoned stream gauge near Hillsdale Avenue in Reach 10C and removal of the abandoned concrete low-flow crossing in Reach 11B. These sities are impediments to fish passage. The schedule for work in Reach 10C is 2010-2017, and in Reach 11B is 2021-2023. Interim fish passage remediation should be provided at both sites as a condition of project approval. Remediation should be concurrent with the October 15, 1999 operation of the upstream Blossom Hill Dropstructure fishway and completion of upstream fish barrier modifications. This would maximize the benefits accruing from 1999 completion of the fishway and upstream barrier modifications, which are project features.

5-5 The District's proposed design to slope bypass channel inverts toward the west bank would create a low-flow channel that would facilitate fish passage. The multi-cell RCB culverts for railroad crossings in Reaches 7 and 8 also must provide for fish passage. Culvert design must comply with fish passage criteria for steelhead trout and Chinook salmon. Design also must preclude the formation of gradient-control conditions that could result in the formation of ponded water areas with potential to entrap fish during receding flow events.

5-6 On DEIR/EIS page 4.14-45, the District states "Mitigation measures for cumulative impacts on fisheries require the District to provide for fish passage at its drop structure upstream of Blossom Hill Road and Mason Dam on Guadalupe Creek and the gabion structure on Alamitos Creek upstream of Mazzone Drive." This is incorrect. It is our understanding (1) the Blossom Hill dropstructure fishway is a primary feature of the proposed project (page 3-41); (2) fish passage at Mason Dam is a component of fisheries mitigation measure F-1 (page 4.14-44); and (3) fish passage on Alamitos Creek is a component of fisheries cumulative impact mitigation measure Cf-1 (page 5-15). The Final EIR/EIS, including the Mitigation and Monitoring Plan (Table 8.1), should use the correct mitigation category designations for these various measures.

Mitigation Bank

5-7 The District proposes (DEIR/EIS page 3-46 & 3-47) to establish a riparian vegetation and shaded riverine aquatic (SRA) habitat mitigation bank as a component of the proposed project to mitigate for future maintenance program erosion repair projects that would require use of hardscaping methods. The mitigation bank, composed of 5.43 acres of riparian vegetation and 5,779 linear feet of SRA habitat must be identified as an integral, mandatory component of the selected project at time of EIR certification, preparation of Findings pursuant to CEQA Guidelines Section 15091, and project approval. Adoption and timely implementation of this mitigation bank are required to mitigate impacts of the proposed maintenance program to less-than-significant levels. 5-7

This mitigation bank must be (1) located along the Guadalupe River within Reaches 6 through 12; (2) established at the earliest reasonable phase of project construction; and (3) consistent with the mitigation bank guidelines of the Department and U. S. Fish and Wildlife Service.

Wildlife

The DEIR/EIS states on page 4.12-25 that "...the impact on yelllow warbler habitat is not considered significant under CEQA." Considering the magnitude of nonforest upland vegetation habitat disturbance and loss compounded with temporal losses associated with a project implementation period of 25 years, impacts to this species should be more fully assessed. Pursuant to CEQA Guidelines Section 15128, the Final EIR/EIS must state the reasons why possible significant impacts were determined not to be significant. 5-8

In reference to Mitigation Measure WL-8 (DEIR/EIS page 4.13-23), burrowing owl surveys should be conducted over at least four consecutive evenings during the height of the nesting season, between April 15 and July 15, and over four evenings between December 1 and January 31 for winter residents. If burrowing owls are found during nesting season surveys, further survey work may be unnecessary. Details regarding recommended survey protocol may be obtained from the Department. 5-9

Mitigation proposed for burrowing owls on DEIR/EIS page 4.13-24 does not provide any compensation for loss of habitat. The District should provide the mitigation described in the District's August 9, 1995 response to Department comments on the Fourth Administrative Draft DEIR/EIS. If impacts to burrowing owl habitat cannot be avoided, a minimum of 6.5 acres of foraging habitat should be preserved for each pair of owls or each unpaired bird impacted by the project. Where on-site mitigation cannot be provided, the off-site compensation ratios, based on 6.5 acres impacted per pair of birds, are (1) 1.5:1 ratio when occupied habitat is being replaced by occupied habitat; (2) 2:1 ratio when occupied habitat is being replaced 5-10 by suitable habitat adjacent to occupied habitat; and (3) 3:1 ratio when occupied habitat is being replaced by unoccupied suitable burrowing owl habitat. Deed restrictions need to be placed on designated mitigation lands to ensure permanent protection.

At least two enhanced or artificial burrows need to be provided for each burrow impacted. Final mitigation requirements will depend upon the number of pairs of birds or single birds that are found in the surveys. A burrowing owl mitigation plan should be developed in cooperation with the Department as the District proposed in the August 9, 1995 response to comments. 5-10

Preconstruction surveys of suitable habitat should be required within 30 days of construction to preclude mortality of burrowing owls. For burrowing owls that are nesting on the property, or close enough to be impacted by the project, a buffer area of 75 meters surrounding the nest(s) needs to be flagged prior to any construction, and left undisturbed for the duration of the nesting season. Disturbance of nesting owls would be a violation of the Migratory Bird Treaty Act and the Fish and Game Code.

5-11 The U.S. Fish and Wildlife Service should be consulted regarding appropriate survey protocol and mitigation for the federally listed California red-legged frog.

Cumulative Impacts

The DEIR/EIS identifies significant cumulative impacts on fishery resources and habitats, including impacts on anadromous fish habitat, water temperature, and sedimentation of fish spawning areas and fish food producing areas (page 5-15). As mitigation, the District proposes to correct fish passage problems on Alamitos Creek, thus providing anadromous salmonids access to approximately 10.7 miles of upstream fish habitat (Mitigation Measure Cf-1). We concur with this impact assessment and proposed mitigation.

5-12 Providing fish passage to upstream habitat is an acceptable approach in compensating for the multiplicity of cumulative impacts affecting anadromous fishery resources. This same mitigation measure, however, also is inappropriately proposed as "off-site SRA mitigation" for the Downtown Guadalupe River Project. This mitigation cannot be claimed for both projects. It is far more appropriate that fish passage improvement on Alamitos Creek be solely identified and adopted as mitigation for cumulative impacts of the Upper Guadalupe River Project. However, if it is adopted as SRA mitigation for the Downtown Guadalupe River Project, then the District must describe and adopt in the Final EIR/EIS an alterative measure that fully mitigates the fisheries cumulative impacts identified in the Upper Guadalupe River Project DEIR/EIS (Cumulative Impact Cf-1). 5-12

Hardscaping Methods

The Department is concerned about the District's proposed use of riprap, gabions, crib walls, sacked concrete slope protection and other "hardscaping" methods of construction for project features and/or the new channel Maintenance Program. Gunite and sacked concrete slope protection provide no opportunity for revegetation of banks. Crib walls, articulated concrete blocks, gabions and dense riprap offer very limited opportunity for herbaceous, weedy revegetation and rarely support any woody riparian restoration. The Department routinely recommends minimizing the use of such structures and methods and, as an alternative, using bioengineering/bioremediation techniques to restore eroding and failing banks.

Bioengineering slope protection measures to restore/recontour eroding banks are available to the District in lieu of traditional "hardscaping" approaches. The District apparently rejects bioengineering methods and techniques on the basis of a criteria that such approaches are unacceptable for channel banks steeper than 2:1 slope and sites with peak flow velocities of 6 feet per second or greater (Appendix C - Maintenance Program). We disagree. This criteria arbitrarily eliminates many bioengineering methods and techniques from consideration, and steers the District toward decisions to employ worst-case "hardscaping" methods. This is a deficiency in proposed project features and the new Maintenance Program. The District needs to reassess and consider a broader inclusion of bioengineering methods in the project and the Maintenance Program. 5-13

Maintenance Program

Periodic vegetation removal and disturbance for channel maintenance is considered to be a less-than-significant impact because the proposed maintenance program incorporates several measures to protect and enhance riparian vegetation, such as "...leaving the bases of native plants in place where possible to allow 10 feet of growth until the next trimming..." (DEIR/EIS page 4.12-24). However, these measures are not incorporated into the proposed maintenance program's "Maintenance Standards for Sediment and Vegetation Removal" (Table 3.21, Appendix C). To the contrary, some of the maintenance standards negate the protection and enhancement measures described in the DEIR/EIS. For example, the performance criteria for control of woody vegetation on channel inverts states "In conjunction with herbicides program, remove or cut vegetation outside of the 5-14

5-14 25' wide corridor on invert to height of 1' or less and chemical treatment of large stumps." (Table 3.21, Appendix C). The Final EIR/EIS must incorporate the riparian vegetation protection and enhancement measures into the proposed maintenance program's "Maintenance Standards for Sediment and Vegetation Removal".

5-15 The proposed Maintenance Standards specify the periodic use of herbicides to eliminate woody and flexible vegetation within a 25-foot-wide strip centered on the existing low-flow channel in Reaches 6 through 12 and a 50-foot-wide strip in Reach A. Extensive, frequent use of herbicides on the stream channel invert may cause substantial direct and indirect impacts on wildlife resources using these areas and substantial impacts on adjacent aquatic, SRA and riparian habitats. It is essential that herbicide treatments not adversely impact wildlife populations nor degrade the functions and values of the aquatic, SRA and riparian habitats located within and adjacent to the defined low-flow channel vegetation clearance strips. The District must describe in the Final EIR/EIS the best management practices or other measures that would be employed to avoid or mitigate to a less-than-significant level the potential adverse impacts of herbicide use on wildlife populations and valuable aquatic, SRA and riparian habitats located along the low-flow channel. Maintenance Program herbicide treatments must not negate fisheries mitigation and environmental protection and enhancement measures described in the DEIR/EIS.

5-16 There are contradictory statements regarding the anticipated difference between existing and post-project channel maintenance sediment removal. DEIR/EIS page 4.12-21 states that the proposed project would result in more extensive sediment removal, whereas page 3-45 states that there would be less extensive sediment removal. Supportive information in the DEIR/EIS and Engineer's Report suggests there will be more sediment removal in Reaches 9 and 11 and in the bypass channels under post-project conditions. The Final EIR/EIS must clarify this contradiction and identify the measures proposed to mitigate impacts associated with increased post-project sediment removal activities.

Water Quality/Hazardous Materials

5-17 The proposed channel modifications and sediment removal activities have potential to eventually cause resuspension of sediments, release of contaminants, turbidity, reduced dissolved oxygen concentrations and related adverse impacts to aquatic environments and resources following the re-watering of construction and sediment removal sites. Adverse impacts could occur onsite, along the course of the river, and in south San Francisco Bay, depending on the nature and magnitude of the impact.

Guadalupe River sediments are known to have elevated concentrations of mercury, documented as high as 25 mg/kg (dry-weight); and sediments in nearby reaches of upstream tributaries have mercury concentrations documented as high as 95 mg/kg in lower Alamitos Creek and 70 mg/kg in lower Guadalupe Creek (SCVNSPCP, 1992). These concentrations exceed the Toxic Threshold Limit Criteria for hazardous waste.

Sediment disturbance and removal associated with both project construction and the post-project maintenance program will expose these disturbance and excavation sites to subsequent flushing flows; thus, these sites could become sources for mercury release into the aquatic environment with subsequent bioaccumulation through the food web. This potential cause and source of mercury contamination is of major concern. Following an assessment of mercury in sediments, the Santa Clara Valley Nonpoint Source Pollution Control Program (SCVNSPCP) recommended to the District in 1992 that "Additionally, in the design, construction, and maintenance of flood control facilities, strategies should be developed for management of significant concentrations of mercury in sediments." (emphasis added) (SCVNSPCP, 1992). Sediments may contain unknown concentrations of other contaminants deposited from upstream sources. The District must address these concerns and potential impacts.

5-18

Although a Level II sampling and analysis of river sediments and embankment soils was conducted, the DEIR/EIS erroneously states that the analysis of the 10 river sediment samples was limited to petroleum hydrocarbons (page 4.4-10). However, the Engineer's Report (page 2-27) states these 10 sediment samples also were tested for EPA priority pollutant heavy metals. Test results in Tables 2.3 and 2.5 of the Engineer's Report reveal that the mercury concentrations of 4 of the 10 samples (40%) exceeded the Puget Sound Marine Sediment Quality Standards (Washington State Department of Ecology, 1991); and of these, 2 (50%) exceeded the Puget Sound Standards minimum cleanup level threshold. In fact, the mercury concentration in the Blossom Hill Road sample (the most upstream sample) was over three times the minimum cleanup threshold value! Some samples had mercury concentrations above the California Department of Toxic Substances Control "chronic" exposure limit.

The District concluded that "Based on the results of the Level II sampling and analysis, the SCVWD has recommended that no further investigation is necessary as regards river sediment and embankment soil." (DEIR/EIS page 4.4-10). This conclusion is not supported by evidence of record. The DEIR/EIS fails to provide information sufficient to permit a full assessment of this potential significant impact and fails to provide mitigation or abatement in response to the test findings reported in the Engineer's Report (Table 2.3). This deficiency is of major concern, especially in recognition of the SCVNSPCP recommendation quoted above regarding the need to address mercury contamination in sediments during design, construction and maintenance of flood control facilities. The DEIR/EIS is deficient and does not comply with CEQA Guidelines Sections 15126, 15144, 15147 and 15151.

5-18 The District must conduct a streambed sediment sampling program to characterize and evaluate the chemical nature of sediments within Project reaches, with particular attention to mercury concentrations. A comprehensive soil profiling plan must be prepared and implemented prior to construction to characterize sediments and embankment soils that are to be removed in order to determine (1) the nature and degree of contamination risk to aquatic environments associated with the subsequent exposure of these excavation sites to flowing water; (2) appropriate mitigation and abatement measures; and (3) sediment and soil reuse and disposal options. These water quality concerns and issues must be fully addressed in the Final EIR/EIS.

Sediment removal and the subsequent exposure of excavation sites to flowing water must not cause downstream contamination and water quality degradation. Project activities must comply with the water quality objectives identified in the 1995 Basin Plan for the San Francisco Bay Basin and the Anti-Degradation Policy of the State Water Resources Control Board.

As CEQA Trustee Agency for fish and wildlife resources, the Department recommends against certification of the DEIR/EIS until the deficiencies, required assessments and mitigations, and the other comments and concerns expressed in this letter are fully addressed. 5-19

Department personnel are available to discuss our comments. If you have questions or desire to schedule a meeting, please contact Margaret Roper, Fisheries Biologist, at (408) 842-8917; or Carl Wilcox, Environmental Services Supervisor, at (707) 944-5525.

Sincerely,

Keith R. Anderson

for Brian Hunter
Regional Manager
Region 3

KRA
Attached distribution

cc: Ms. Janice Gan
U. S. Fish and Wildlife Service
3310 El Camino, Suite 130
Sacramento, CA 95821

Mr. Ian Gilroy
National Marine Fisheries Service
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404

Ms. Margaret Roper
Mr. Carl Wilcox
Mr. Keith Anderson
Ms. Martha Schauss

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY PETE WILSON, *Governor*

DEPARTMENT OF TRANSPORTATION
BOX 23660
OAKLAND, CA 94623-0660
(510) 286-4444
TDD (510) 286-4454

April 4, 1997

SCL-87-6.90
SCH97022059
SCL087039

Mr. Dennis Cheong
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Dear Mr. Cheong:

Re: **Draft Environmental Impact Report/Engineer's Report: Upper Guadalupe River Flood Control Project.**

Thank you for including the California State Department of Transportation (Caltrans) in the environmental review process. We have reviewed the above-referenced documents and wish to forward the following comments:

1. Please clarify if the improvements to the Guadalupe River will affect the I-280/State Route 87 interchange or State Route 85 at the percolation ponds. Will any State right-of-way be required to complete the project? Caltrans' access control along the Guadalupe River will have to be maintained. 6-1

2. Any work performed within the State right-of-way will require an encroachment permit from Caltrans. A completed application, environmental documentation and five sets of plans should be submitted to the following: 6-2

G. J. Battaglini, District Office Chief
Caltrans District 4
Maintenance Services & Permits
P. O. Box 23660
Oakland, CA 94623-0660

6-2 We appreciate the opportunity to work with you on this project and wish to continue close correspondence on any new developments. Should you have any questions regarding these comments, please contact Salimah As-Sabur of my staff at (510) 286-5583.

Sincerely,

HARRY Y. YAHATA
District Director

By: Phillip Badal

PHILLIP BADAL
District Branch Chief
IGR/CEQA

cc: Angel Howell, SCH

COMMENT LETTER 7

County of Santa Clara

Roads and Airports Department
Land Development and Permits

101 Skyport Drive
San Jose, California 95110

1850

April 16, 1997

✓ Mr. Dennis Cheong
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Subject: Guadalupe River Draft Environmental Impact Report/ Environmental Impact Statement and Engineer's Report Almaden Expressway

Dear Mr. Cheong:

Your February 19, 1997 letter along with the attachments has been reviewed. Our comments are as follows:

1) A review of our file information has indicated that our January 8, 1991 letter included our comments on the Notice of Preparation of the proposed project. Please see the attachment. 7-1

2) From a quick review of the Draft EIR, it is observed that the Item Nos. (1), (2) and (3) of our January 8, 1991 letter are not addressed. This should be done. 7-2 7-3

3) The County should review and approve the improvement plans of the project relative to Almaden Expressway. We will offer specific comments at the time of reviewing improvement plans. 7-4

4) A County encroachment permit should be obtained prior to the beginning of any work within the County's Almaden Expressway right-of-way. 7-5

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, James T. Beall, Jr., S. Joseph Simitian
County Executive: Richard Wittenberg

7-6 5) As you are aware, the County of Santa Clara and Santa Clara Valley Transportation Authority (VTA) are now separate entities. VTA should review and comment upon the proposed Draft EIR.

Please call me at (408) 573-2462 if you have any questions.

We thank you for the opportunity to review this matter.

Sincerely,

Ashok Vyas
Project Engineer

AV:rtj
Attachments
cc: TDR/JRR, VTA
RBP
DEC
MA
File

COMMENT LETTER 7

Santa Clara County Transportation Agency

An Agency of the County of Santa Clara

P.O. Box 611900, San Jose, CA 95161-1900

January 8, 1991

Dr. Bernard H. Goldner
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Subject: Notice of Preparation of a Draft Environmental Impact Report (EIR)
Guadalupe River Flood Control Project - Almaden Expressway

Dear Mr. Goldner:

Your November 19, 1990 Notice of Preparation along with the attachments has been reviewed. Our comments are as follows:

The stipulated response date of the subject referral was December 21, 1990. As discussed with Mr. George Fowler of the Water District staff during the phone conversation on January 7, 1991, we can send in our comments on or before January 11, 1991. We appreciate your consideration in this matter.

(1) The proposed project would require the addition of a reinforced concrete box (RCB) culvert at Canoas Creek and Ross Creek crossings of Almaden Expressway. As stated in your November 19, 1990 letter, a cut and cover i.e., open trench construction technique is planned to be used. Normally, open trench excavation across Expressway is not allowed. However, based upon "Amendment No. 21 to the County Expressway Policy Resolution (as Amended): Transverse Underground Utility Encroachment", an open cut across an expressway can be considered, if bore and jack method is impracticable. We have attached a copy of the County Board of Supervisors' November 3, 1980 Policy regarding the open cut method for the installation of transverse utilities, listing the procedure to be followed. It is recommended that the Engineer's Report discuss the procedure to be followed as outlined in the May 13, 1990 list for open cut method and demonstrate the following:

- The additional construction costs and/or delays due to boring and jacking.
- That alternative routes are impractical.
- That the proposed construction operation will maintain public safety, minimize public inconvenience and minimize additional long term operational and maintenance costs.
The outline dated May 13, 1980 may help you in formulating your request for the use of a open cut method to cross Almaden Expressway.

We will be prepared to issue an Encroachment Permit to open cut Almaden Expressway after the provisions of the Board's November 3, 1980 policy have been met and we have approved your construction documents (e.g. plans, specifications, traffic control measures and other items listed on the May 13, 1980 outline).

Board of Supervisors: Susanne Wilson, Zoe Lofgren, Ron Gonzales, Rod Diridon, Dianne McKenna

COMMENT LETTER 7

(2) It is observed that the enclosed plans do not include the portion of work near the bridge on Guadalupe River at Capitol Expressway. Please note that we have an existing operational traffic problem at the bridge location easterly of Chard Drive due to inadequate return radius. It is recommended that the Engineer's Report address this issue and include the necessary mitigation measure.

(3) This Agency is in the process of planning and designing High Occupancy Vehicles (HOV) lanes along Almaden Expressway. Typical right-of-way necessary to install HOV lane is 79 feet half street. It is, therefore, recommended that the project plan provide for a minimum length of 79 feet for the new box culvert and also the lengthening of the existing culvert so as to enable the County to install HOV lanes at a future date.

(4) We have an existing bus stop southbound Almaden Road farside Curtner Avenue which will be impacted due to the project. At the time of the project plan review, we may require transit-related improvements for the bus stop impacted due to the project.

(5) At the time of project plan review, this Agency will require that a traffic control plan be submitted for this Agency's review and approval. The traffic control plan should be based upon Caltrans' "Manual of Traffic Controls for Construction and Maintenance Work Zones" - latest edition.

(6) A County encroachment permit should be obtained prior to beginning any work within the County's Almaden Expressway right-of-way.

(7) We may have additional comments at the time of future reviews.

(8) A Copy of the Engineer's Report and Environmental Impact Study should be furnished for our review and comments.

Please call me at 299-4205 if you have any questions.

We thank you for the opportunity to review this matter.

Sincerely,

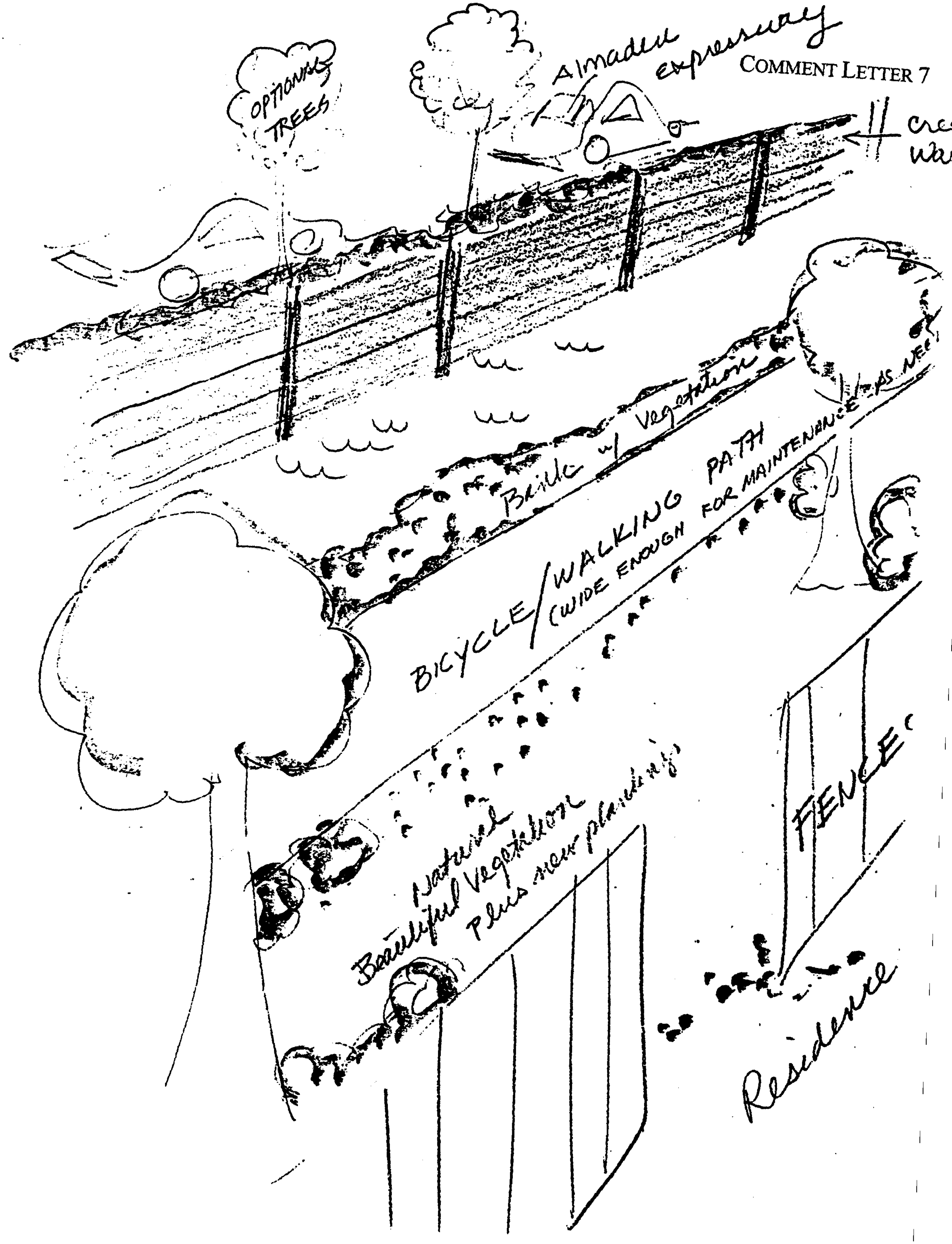
1/8/'91

ASHOK VYAS
PROJECT ENGINEER

AV:kh

Attachment

cc: VCH
WLK
RKW
RGH


Almaden expressway
OPTIONAL TREES
cre
wa
Bank w/ Vegetation
BICYCLE/WALKING PATH
(WIDE ENOUGH FOR MAINTENANCE VEHICLES NEE
Natural
Beautiful Vegetation
Plus new planting
FENCE
Residence

County of Santa Clara

Environmental Resources Agency
Parks and Recreation Department

298 Garden Hill Drive
Los Gatos, California 95030
(408) 358-3741 FAX 358-3245
Reservations (408) 358-3751 TDD (408) 356-7146

COMMENT LETTER 8

April 17, 1997

Mr. Dennis Cheong or Mr. Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

SCVWD

SUBJ: Guadalupe River Draft Environmental Impact Report/Environmental Impact Statement and Engineer's Report

Dear Mr. Cheong or Mr. Neudorf:

We are in receipt of the Santa Clara Valley Water District's Draft Environmental Impact Report/Environmental Impact Statement and Engineer's Report for a proposed project on the Guadalupe River. Our comments pertain to regional recreational impacts, primarily the regional trail corridor and associated trail linkage as proposed in the 1995 Countrywide Trails Master Plan.

8-1

The project proposes channel modifications to the Upper Guadalupe River upstream of Interstate 280 to Blossom Hill Road, Ross Creek, and Canoas Creek in the City of San Jose, Santa Clara County. Please note that Trail S3 - the Guadalupe Trail identified in the Santa Clara Countrywide Trails Master Plan (enclosed) is proposed along the full length of the Flood Control Study area. The trail connects to S6 - the West Valley or Los Alamitos Creek Trail; C18 - Guadalupe Reservoir/Calero Trail; C17 - Alameda - Hicks Road Loop; R1-B - Anza Trail (where it overlays the Bay Trail) and, R4 - Bay Trail. Linkage to these connector trails as well as provision for the proposed Guadalupe Trail will be important. The map identifying the corridor and associated linkage is located at the end of the enclosed report.

The Trails Master Plan provides an extensive discussion on trail design guidelines beginning on page 62 of the enclosed report. We would suggest the flood control project take the proposed trail corridor, associated links and trail guidelines into consideration to ensure the effective realization of the proposed regional trail system. 8-2

Thank you for the opportunity to provide comments on the subject documents

Sincerely yours,

Ruth M. Shriber
PARK PLANNER

Enclosure

cc Lisa Killough

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Peter McHugh, James T. Beall Jr., S. Joseph Simitian
County Executive: Richard Wittenberg

COMMENT LETTER 9

CITY OF SAN JOSÉ, CALIFORNIA

DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT
801 NORTH FIRST STREET
SAN JOSE, CA 95110-1795

GARY J. SCHOENNAUER
DIRECTOR OF PLANNING

April 18, 1997

Mr. Dennis Cheong
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose CA 95118

SUBJECT: UPPER GUADALUPE RIVER FLOOD CONTROL PROJECT DRAFT EIR/EIS

Dear Mr. Cheong:

Thank you for the opportunity to review the Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) prepared for the Upper Guadalupe River Flood Control Project and the Guadalupe River Watershed Planning Study Engineer's Report. The City has reviewed the EIR/EIS document and the Engineer's Report and would like the following comments to be addressed:

1. Minimized Vegetation Impacts (MVI) Alternative - If this alternative is ultimately required for portions of the project, consideration should be given to implementing it in the following sections which would also provide the greatest recreational trail benefits: 9-1

   - Reaches 9 and 10a: The MVI Alternative would allow trail development to stay within the river corridor at the top of bank, rather than the on-street alignment that would be required with the Preferred Project (PP) Alternative.

   - Reaches 10C and 11: The MVI Alternative would allow the trail to be located along the top of bank improving safety, security and access to frontage roads. The PP Alternative places the trail near the bottom of the channel in some areas thereby reducing visibility and access and subsequently increasing ongoing maintenance since this area will periodically flood. 9-2

PLANNING DIVISION (408) 277-4576 IMPLEMENTATION DIVISION (408) 277-4576 BUILDING DIVISION (408) 277-4541
CODE ENFORCEMENT (408) 277-4528 DIRECTOR OF PLANNING (408) 277-4754 FAX NUMBER (408) 277-2977

9-3 2. Recreational Trail Plans - It is expected that trail improvements will be implemented in conjunction with, or subsequent to, the flood control project. Potential trail locations should therefore be shown on the flood control plans and cross sections in the EIR.

9-4 3. Figure 1.1 "Reach Map": Los Gatos Creek is misnamed as Guadalupe River.

9-5 4. Figure 4.1-4 "Seismic Hazard Map": designation of seismic hazard for portion of San Jose International Airport is missing.

9-6 5. Section 4.2 "Surface and Groundwater Hydrology": The SCVWD Watershed Planning Study Engineer's Report briefly describes the impact of the project on local drainage, however, this section does not. Project effects on local drainage should be discussed, particularly the following:

- Changes in the water surface elevations and the impact of any changes, including future changes due to allowances for siltation and vegetation growth. This request applies to the "ten-year" and "ordinary high water" surface elevations as well as the "100-year" surface elevations.
- Changes in overland flow routes and depths.
- Changes in ponding depths in areas where runoff is impounded particularly adjacent to Canoas Creek where runoff is currently impounded and the levees are being raised three to four feet.

9-7 6. Table 4.2-2 "Guadalupe River History": recurrence intervals are different from those shown in the Engineer's Report and values for 1995 floods are questionable.

9-8 7. Floodwall adjacent to Elks Lodge - The floodwall reduces the visibility of the planned recreational trail in this reach. An evaluation of potential safety and security issues should be included in the Public Safety section for any alternatives that include the floodwall.

9-9 8. Section 5-3: this section of the EIR/EIS should be revised to include an appropriate statement that potential impacts from the development of the Guadalupe River Trail will be addressed in the Army Corps of Engineers EIR/EIS.

9-10 9. Earthen channels, where feasible, should be considered for the bypasses that are in the PP Alternative.

10. The effects of the project on the National Flood Insurance Program in San Jose should be discussed. 9-11

11. The Reach A plan and profile exhibits in the Engineer's Report (Sheets 3-6) identify an additional easement area for the Water District on Airport property on the west bank of the Guadalupe River. This requirement is not identified in the project description nor in Table 2.1 (permit/license requirements)of the Draft EIR/EIS. No discussion with the Airport Department has occurred regarding the proposed easement and, in fact, the granting of an expanded easement area may not be possible for the following reasons: the proposed easement may displace areas reserved for Airport Boulevard landscaping (mitigation for previous projects); the proposed easement may intrude into, or overlap, an existing PG&E easement; and the City may need to retain the option of widening Airport Boulevard in the future. 9-12

12. Page 3-12 of the Draft EIR/EIS states that levees up to two feet on both banks between the "Airport island" bridge and the Airport Parkway bridge would be constructed *"in the interim"* before Highway 87 is constructed. Explanation is needed as to why this is only an interim component of the project and what is being proposed after Highway 87 is constructed. Page 3-19 of the Engineer's Report states that levees up to three feet on both banks would be constructed *"in the interim."* The City's Skyport Bridge project is currently being designed under the assumption that three-foot levees will be constructed as previously reported by Water District staff. 9-13

13. Sheet 3 of the Engineer's Report shows a replacement of the existing swale at the Airport island parcel with a 12 inch outfall with flapgate. This feature is not identified in the Reach A project description nor as a mitigation measure. Documentation is needed to show that this facility provides adequate drainage for the existing parking lot and proposed future garage. 9-14

14. The bottom of the existing Highway 101 bridge over the river is lower than the existing banks of the river. The Draft EIR/EIS should clarify how this will affect storm flows at this location and at adjacent property. 9-15

15. The project needs to account for a future second bridge to the Airport Island parcel as proposed in the Airport Master Plan Update project (all Project Case Alternatives). The Water District is aware of this proposed bridge since it reviewed and commented on the City's Draft EIR for the Airport Master Plan Update on December 13, 1996. 9-16

16. Page 3-92 of the Engineer's Report identifies Airport property along the west bank of the river as possible staging areas for the project. Discussion with the Airport 9-17

9-17 Department needs to occur given that much of this area is designated for, or already contains, mitigation landscaping for previous projects.

The City of San Jose is supportive of the SCVWD's efforts to provide flood control improvements for the upper Guadalupe River. We appreciate the opportunity to comment on the Draft EIR/EIS and look forward to continuing our cooperative efforts for this joint flood control/park project.

Sincerely,

Janis Moore
Planner II

JAM:jam

c: Thomas Fletcher
Cary Greene
Carla Ruigh

SCVWD/JAM6

COMMENT LETTER 10

GUADALUPE - COYOTE
RESOURCE CONSERVATION DISTRICT
888 NORTH FIRST STREET RM. 204, SAN JOSE, CA 95112
OFFICE (408) 288-5888 FAX (408) 993-8728

April 16, 1997

Messrs. Dennis Cheong and Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Subject: Draft Environmental Impact Report/Environmental Impact Statement, Upper Guadalupe River Flood Control Project, dated January 1997

Dear Mr. Cheong and Mr. Neudorf;

We have reviewed the Draft Environmental Impact Report / Environmental Impact Statement, Upper Guadalupe River Flood Control Project dated January, 1997. We thank you for the opportunity to comment on this scope of work.

CHAPTER 3.2 ALTERNATIVES ELIMINATED FROM FURTHER STUDY DEIR/EIS

Stream Restoration Alternative

We do not believe this alternative has had an adequate analysis. The reasons for rejecting the Streambed Restoration Alternative from further consideration are not compelling. Even if construction-related impacts to wetlands and SRA habitat are greater than under the preferred project, it is a virtual certainty that long-term impacts to habitat values in the entire watershed would be greatly minimized if the Stream Restoration alternative were implemented. 10-1
Furthermore, "regulatory uncertainty" exists in any project permitting situation, and should not serve as the basis for eliminating an environmentally preferable alternative from further consideration, especially if the alternative is the one most likely to comport with the broader regulatory mandates of the permitting agencies. Vegetation would reestablish with this alternative; thus, the reduction of long-term impacts would allow the project to follow the CEQA guideline, "reduce (impacts) over time".

The Stream Restoration Alternative also needs to be analyzed or described from **an engineering perspective of sediment transport and flow regime as well as finance and maintenance** costs before decision makers have adequate information for their review. The objective of this 10-2

10-2 option is the re-establishment of the functions and values of the riparian corridor. This alternative would be geomorphologically designed to carry out the sediment load in the stream which is critical in the design of a flood control channel and future impacts to riparian ecology and maintenance cost. It would restore the natural sinuosity of the Guadalupe River channel; enhance sediment transport, and provide for long term stabilization of the banks (cutting maintenance costs). Additionally, "significant new riparian vegetation" would be allowed "to re-establish and (the Stream Restoration Alternative) strives to create a functional physical and biological river system that allows natural processes to occur while restoring and maintaining habitat values for fish and wildlife." *The goals and policies of Santa Clara County and the San Jose General Plan strive to protect our riparian habitats, provide flood protection and reduce maintenance costs.* Additionally, the Santa Clara Basin Watershed Management Initiative Group is engaged in a planning process to establish a watershed management plan that will protect water quality discharge to the bay.

10-3 The Stream Restoration Alternative would reduce sediment transport by providing bank stability and the "significant new riparian vegetation" would help filter out pollutants while providing habitat for wildlife. We believe the Stream Restoration Alternative plan could satisfy the goals of citizens, Santa Clara County, the City of San Jose, and resource agencies.

10-4 Those who have been studying the Guadalupe River Downtown Flood Control Project know the sediment transport of that designed project has been a failure. Because contracts 1 & 2 are in disequilibrium, or **unstable**; the Guadalupe River has not been carrying out its bedload, but has been depositing the sediment at a rapid rate covering over the low flow channel weirs, blocking fish passage and destroying the mitigation plantings, resulting in failed mitigation. **The maintenance costs of unstable streams will be prohibitive to repeat in projects that are planned for city or county wide future projects, including some that may be linked to this EIR/EIS.** The Stream Restoration Alternative design would restore the natural sinuosity of the river channel and enhance sediment transport while providing for a stable waterway which will act as a basis for the other planned projects. Since Canoas and Ross Creeks are incorporated into this project and have similar sediment problems that impact the Guadalupe River, please discuss their relationship to the Guadalupe River and sediment transport, and could you include the Stream Restoration Alternative in this discussion?

10-5 Providing for the long term stability and stabilization of the banks by restoring the plan, profile, and geometry of the active channel would save citizens tax dollars. Maintenance cost over the life of a project needs to be considered in the total of a project's cost to the public since these costs will continue for 100 years, the life of the project. By restoring the natural sinuosity and with the resultant new vegetation stabilizing the banks, there will be a significant reduction in maintenance costs over the lifetime of the Stream Restoration Project with the capability of vegetative filtration to enhance water quality.

CHAPTER 2-5 GUADALUPE RIVER WATERSHED PLANNING STUDY ENGINEERS REPORT - Watershed Management Measures. *"The goal of Watershed*

Management Measures (WMM), the Santa Clara Valley Nonpoint Source Pollution Control Program, is to facilitate the cost effective protection of the beneficial uses of Santa Clara Valley streams and the South Bay." All other goals of the WMM are listed as secondary. The Guadalupe River is listed as both a cold and warm water stream under beneficial uses in the Basin Plan. The Preferred Project is neither cost effective in the required scope of maintenance, *nor protective of cold water stream values;* by way of example, mitigation banks will be established because it is projected that up to 80 linear feet per year of stream bank will be converted over to a hard surface, thus, the stream increasingly loses its SRA vegetation and vegetative filtration capabilities over the life of the project. 10-6 It is unclear whether the mitigation banking for this Streamside Aquatic Vegetation is going to be in kind and immediately adjacent to the site, please discuss. If there is spawning habitat that will be impacted and the mitigation SRA bank is ineffective for salmon and steelhead spawning/ rearing use, what mitigation is planned for these habitat losses? 10-7

PREFERRED PROJECT - Maintenance

There is not enough money in tax coffers to channalize and maintain every waterway in the county with the type of channel design of the Preferred Project. What are the costs of the Preferred Project's maintenance which covers sediment removal, herbicide spray, and revetment of failed banks over the life of the Project? 10-8 What is the scope (miles, cost and type of chemical) of herbicide maintenance needed for spraying vegetation along the maintenance roads, bypass channels per year in the Preferred Project and over the lifetime of the Project based on the present rate of inflation? 10-9 10-10 What is the cost of sediment removal per year and over the lifetime of this project based on the present inflation rate? 10-11 What are the projected revetment costs per year and over the lifetime of the project? 10-12 Has a budget plan for the required maintenance program for this project been designed? Does the Santa Clara Valley Water District plan maintenance costs for each project, or is the maintenance program seperate from the design and construction of projects? 10-13 Has a plan been approved? When do you expect the money to be allocated to the maintenance budget? How much money is expected to be allocated to the maintenance budget for this project per year? 10-14 How many dollars are in the budget for this project at present? Is it projected that the maintenance budget will need to allocate money from any benefit assessment taxes over the lifetime of the project? How close to the river will the herbicide be sprayed? Are carcinogenic or mutagenic chemicals to be used in the maintenance program? Discuss the carcinogenic or mutagenic effects of the herbicides you are using. 10-15 10-16 10-17

Maintenance roads are stated to be 18' wide, with some having concrete ramps. Since over 95% of riparian areas in California have been destroyed, please discuss the necessity of building 18' wide roads in our endangered riparian areas and sacrificing the remaining riparian corridors of the Guadalupe River. 10-18 Does the necessity of having concrete ramps on 20% slopes override the importance of protecting the riparian corridor and its wildlife habitat? Please discuss. 10-19 What is the criteria for deciding how many ramps will be placed in riparian areas in each reach? 10-20 Will there be a fixed limit to the maintenance roads and number of ramps in the Project? What is the combined number of acreage to be used for the new 18' wide roads and ramps in the project area? 10-21 What

10-22 are the cumulative impacts this acreage has on the riparian corridor and spawning and rearing of salmon and steelhead trout in regards to mean river temperatures and hide cover? 10-23 What are the cumulative impacts of these maintenance roads and ramps to Valley Oaks and trees protected by City Tree Ordinance? 10-24 What measures will be taken to lessen runoff and erosion from these roads and ramps into the stream?

CHAPTER 2.3 DEIR/EIS

Purpose and Need for Project

10-25 You have referred to the river flooding and causing sediment deposition. Is this in reference to deposition on the floodplain or in the river channel? We would like clarification of the statement that flooding caused bank erosion. Would the Stream Restoration Alternative alleviate both of these problems?

10-26 The Guadalupe River has flooded a number of times since 1779. Have any of these been a 1% flood?

ENGINEERS REPORT CHAPTER 2-75

10-27 The Engineer's Report states that local drainage outlets are installed with flap gates which discharge by gravity. How much of the backup flow is calculated in your figures for the 1% flood?

2.5 REGULATORY AND PERMIT REQUIREMENTS DEIR/EIS

10-28 Section 9 and 10 of the Rivers and Harbors Act apply to the project area of the Guadalupe River and permits must be obtained under this act for work done in the main river channel. We did not see this included in Table 2.1 of the EIR.

10-29 The State Lands Commission has jurisdiction of the bed of all navigable waterways in the State and reviews all projects affecting those waterways for consistency with the Public Trust Doctrine. We did not see the State Lands Commission listed in the Table.

CHAPTER 3-54 DEIR/EIS

IDENTIFICATION OF ENVIRONMENTALLY SUPERIOR ALTERNATIVE

10-30 The Minimize Vegetation Impact Alternative is listed in the DEIR/EIS as the environmentally superior alternative. ***As stated previously, we believe the Stream Restoration Alternative to be the superior alternative because of the sediment transport capabilities of natural streams and the bank maintaining abilities of natural streams. The Stream Restoration Alternative would result in less vegetative loss over the life of the project and re-establish lost vegetation which would result in lower stream temperatures and high quality wildlife habitat.*** 10-30

We believe the information presented is weighted toward the Preferred Project, and the Minimize Vegetation Impacts Alternative, with less information or weight given the Stream Restoration Alternative. Thus, citizens and decision makers have not been given an opportunity of a fair evaluation in this DEIR/EIS. 10-31

FISHERIES

The DEIR/EIS states that as a means of mitigating project impacts to fisheries, the District would improve fish passage conditions by removing or modifying barriers to fish passage, thereby providing access to quality habitat in tributary streams. We believe the District is already under a legal obligation, pursuant to section 5901 of the Fish and Game Code, to remove all barriers to fish passage on streams from which it is licensed to appropriate water. By maintaining such barriers, the District is currently acting in unlawful violation of that section. There are organizations that have joined in bringing a complaint against the District before the State Water Resources Control Board, seeking to enforce section 5901 and require the District to remove the barriers. We accordingly believe it is inappropriate for the District to claim performance of an existing legal duty as a mitigation measure for the proposed project. 10-32

The 1995 Judgement Settlement against the District, cited repeatedly throughout the DEIR/EIS, provides that: "The (District) shall continue the development of the District Guadalupe Fisheries Management Plan." This plan is not described in the DEIR/EIS, and the status of its development is unknown to us. However, it would be inappropriate for the District to proceed with any flood control project on the Upper Guadalupe unless and until the Fisheries Management Plan is complete. As the Plan was presumably already under development in 1995, it is not unreasonable to require the District to complete it prior to commencement of work in 1998, and to incorporate it into the Final EIR/EIS. 10-33

The EIS/EIR should stipulate that prior to the initiation of construction, the Integrated Vegetation Mitigation Plan, the Vegetation Protection Plan for Riparian and Urban Forests, and the Guadalupe Fisheries Management Plan (see above) are complete and have received approval from SFRWQCB, CDFG, USFWS, and NMFS. 10-34

The Cumulative Impacts Analysis is deficient because it assumes an acceptable level of mitigation by the Downtown Project. In the fisheries subsection of the Cumulative Impacts Analysis section, specifically on pp. 5-2 and 5-14, the document acknowledges that the downtown GRFCP "will affect approximately 9,800 linear feet of SRA habitat; however, impacts on SRA 10-35

10-35 habitat and mitigation sites are being reevaluated." The DEIR/EIS also states on p. 5-2 that the Corp's final mitigation and monitoring plan for the downtown project "is being revised to address a number of issues, including impacts on shaded riverine aquatic (SRA) habitat." Finally, on p. 5-14, it states that "Loss of SRA habitat from implementing the Downtown Guadalupe project will be fully mitigated." This is misleading. The DFG and USFWS have demonstrated that full mitigation is not feasible under the current SRA mitigation package, and have so informed the Corps. The DEIR/EIS's conclusion that "the cumulative impact of removing streamside vegetation is therefore considered less than significant, and no mitigation is required," is therefore unsubstantiated.

10-36 Finally, Mitigation Measure CF-1, which includes providing fish passage at the gabion structure on Alamitos Creek upstream of Mazzone drive, is already part of the SRA Mitigation package for the Downtown Project. It is inappropriate for the District to claim this action as mitigation for both projects.

10-37 The chinook returning to the Guadalupe are portrayed in the DEIR/EIS as "strays" from CDFG hatcheries. The EIR states that genetic testing of the Guadalupe River chinook salmon was initiated by the DFG in 1994. Genetic testing was started in 1993, and continued in 1994. The results of the 1993 genetic testing indicated that the first eight samples did not match any known hatchery fish and the first samples from the 1994 sampling indicated the same results (J. Neilson).

10-38 The DEIR/EIS p. 4.14-13, states that 21% of the sampled chinook salmon "could not be identified with any known wild or hatchery population sampled to date in the Central Valley." Most chinook salmon prefer large, long rivers for spawning, but the Guadalupe River is a short river. Salmon have been observed spawning only yards above tide water. The Guadalupe River chinook are unique in this respect. Bianca Strieff, a NRCS regional fishery biologist supported this statement after surveying the Guadalupe River salmon in 1995, stating she believed the fish were unique and special. What significance would a genetically unique population have in the long-term survival of the species? We would like your comments on the importance of "straying" in minimizing the impacts of stochastic events, especially for species in decline.

10-39 Steelhead trout and chinook salmon are close to receiving a final determination on listing. It would be prudent to include fishery management plans that accommodate threatened or endangered species status for the steelhead trout and chinook salmon in the Guadalupe River system in the Final EIR/EIS.

10-40 The GCRCD has documentation which shows the chinook salmon begin to enter the river in June. The data on fisheries that is presented in the DEIR/EIS is incomplete. The GCRCD has photos, video tape and newscasts of salmon in the river from 1993 through 1996. Steelhead trout were captured on video in 1996.

10-41 In late 1996, Santa Clara University students found the parasitic worm, Planeria, in Guadalupe creek between Camden Avenue and Almaden Expressway. The students classified this stream as having a degraded condition. Unfortunately, this is one of the creeks mentioned as being available for salmon habitat once barriers are removed. Given that this project will continue until the year 2023, good salmon stream habitat needs to be kept continually viable during the duration of the project. 10-41

Sincerely,

Nancy Bernardi

Nancy Bernardi
Director

cc. Robert F. Smith
Regulatory Branch
U.S. Army Corps of Engineers
333 Market Street
San Francisco, CA 94105-2197

Tom Mumley
Regional Water Quality Control Board
2101 Webster St. Ste 500
Oakland, CA 94612

Steve Shoenburg
U.S. Fish & Wildlife Service
3310 El Camino, Sutie 130
Sacramento, CA 95825

Margret Roper
Dept. Fish & Game
P.O. Box 1723
Gilroy, CA 95021

Deborah Johnston
Dept. Fish & Game
20 Lower Ragsdale Dr.
Ste 100 Monterey, CA 93940

James R. Bybee
National Marine Fisheries Service
777 Sonoma Ave. Rm 325
Santa Rosa, CA 95404

COMMENT LETTER 11

San Jose
Water
Company

374 West Santa Clara St.
San Jose, CA 95196-0001

FACSIMILE TRANSMITTAL

DATE: 18 APRIL 97 TIME:

FROM: ED MELLO JOB NO.:

PHONE NO.: 279-7847

SJWC ENGINEERING/OPERATION FAX NO.: (408) 292-5812

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: DENNIS CHEONG

COMPANY: SANTA VALLEY WATER DISTRICT

FAX NO.: 268-7687

NO. OF PAGES TRANSMITTED (INCLUDING THIS PAGE:) 2

SUBJECT: GUADALUPE RIVER STUDY

REMARKS: ATTACHE PLEASE FIND THE SAN JOSE WATER CO. COMMENTS ON THE JANUARY 1997 DRAFT EIR.

THERE IS A TYPO ON SHEET 3-216. THE MAIN UNDER NIGHTINGALE IS 6" AND NOT 16" AS NOTED FOR THE CANOAS CREEK REACH. 11-1

SJW FORM NO. 131

CALCULATION SHEET

SUBJECT GUADALUPE RIVER PROJECT DATE 18 APRIL 97 NO.

I-280 TO BLOSSOM HILL ROAD MADE BY MGS

CHECKED BY ELM

ADDITIONALS COMMENTS TO DRAFT EIR JANUARY 1997.

11-2 1. THE 31" PIPELINE ON HILLSDALE WILL REMAIN IN PLACE UNTIL THE BRIDGE ON PEARL AVE IS BUILT.

11-3 2. WELL #4 AT BRYAN AVE STATION SHALL BE RELOCATED NOT LOWERED.

11-4 3. ROSS CREEK:

a) THE MAIN AT CHERRY AVE MAY NEED TO BE RELOCATED DUE TO CONFLICT WITH WING WALLS.

b) THE MAIN AT JARVIS RD NEEDS TO BE RELOCATED DUE TO CONFLICT WITH BOX CULVERT.

11-5 4. CONCERN FOR WELLS #3 & #4 AT BRANHAM LN STATION THAT THEY MAY BE BELOW THE PLANNED 100 YEAR STORM HIGH WATER LEVEL. IN THE CASE THAT THEY ARE, THEY WILL NEED TO BE RAISED OR RELOCATED.

COMMENT LETTER 12

cc: Randy Talley
Terry Neudorf
Paul Ferguson
Afshin Rouhani.

Pacific Gas and Electric Company

111 Almaden Boulevard
P.O. Box 15005
San Jose, CA 95115-0005

March 24, 1997

Guadalupe River Planning Study
Attention: Dennis Cheong
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Re: Guadalupe River Draft Environmental Imp
Environmental Impact Statement and Engi

- Standard language on getting permits & work w/ PG&E.
- Request EMF studies.

Dear Mr. Cheong:

Thank you for the opportunity to review the Guadalupe River Draft Environmental Impact Report/Environmental Impact Statement and Engineer's Report. PG&E has the following comments to offer.

PG&E owns and operates both gas and electric distribution and transmission facilities which are located within the proposed project. To promote the safe and reliable maintenance and operation of utility facilities, the California Public Utilities Commission (CPUC) has mandated specific clearance requirements between utility facilities and surrounding objects or construction activities. To ensure compliance with these standards, project proponents should coordinate with PG&E early in the development of their project plans. Any proposed development plans should provide for unrestricted utility access and prevent easement encroachments that might impair the safe and reliable maintenance and operation of PG&E's facilities. 12-1

Some examples of activities which could have an impact upon our facilities include permanent/temporary changes in grade over or under our facilities; construction of structures within or adjacent to PG&E's easements; and planting of certain types of vegetation over or underneath our gas and electric facilities respectively.

Developers will be responsible for the costs associated with the relocation of existing PG&E facilities to accommodate their proposed development. Because facilities relocation's require long lead times and are not always feasible, developers should be encouraged to consult with PG&E as early in their planning stages as possible. 12-2

Relocations of PG&E's electric transmission and substation facilities (50,000 volts and above) could also require formal approval from the California Public Utilities Commission. If required, this approval process could take up to two years to complete. Proponents with development plans which could affect such electric transmission facilities should be referred to PG&E for additional information and assistance in the development of their project schedules. 12-3

12-4 We would like to recommend that environmental documents for proposed development projects include adequate evaluation of cumulative impacts to utility systems, the utility facilities needed to serve those developments and any potential environmental issues associated with extending utility service to the proposed project. This will assure the project's compliance with CEQA and reduce potential delays to the project schedule.

12-5 We also encourage the Water District to include information about the issue of electric and magnetic fields (EMF) in the DEIR/EIS. It is PG&E's policy to share information and educate people about the issue of EMF.

Electric and Magnetic Fields (EMF) exist wherever there is electricity--in appliances, homes, schools and offices, and in power lines. There is no scientific consensus on the actual health effects of EMF exposure, but it is an issue of public concern. If you have questions about EMF, please call your local PG&E office. A package of information which includes materials from the California Department of Health Services and other groups will be sent to you upon your request

12-6 The California Constitution vests in the California Public Utilities Commission (CPUC) exclusive power and sole authority with respect to the regulation of privately owned or investor owned public utilities such as PG&E. This exclusive power extends to all aspects of the location, design, construction, maintenance and operation of public utility facilities. Nevertheless, the CPUC has provisions for regulated utilities to work closely with local governments and give due consideration to their concerns. PG&E must balance our commitment to provide due consideration to local concerns with our obligation to provide the public with a safe, reliable, cost-effective energy supply in compliance with the rules and tariffs of the CPUC.

12-7 Gas Department Comments: Any proposed activities with the potential to change the grade above our pipelines (temporary or permanent) must be reviewed and approved by PG&E. (Other potential concerns could also include; 1) compaction over the pipelines due to heavy equipment; 2) Underground Service Alert (USA) location of facilities before excavation near easements; 3) changes in the drainage patterns that could undermine stability of soils around pipelines; and 4) future construction of additional facilities within easement).

12-8 Electric Department Comments: G.O. 95 clearances must be maintained at all times. As with the Gas facilities, access to the facilities must be maintained for normal inspections, maintenance and operation of the facilities. Bollards must be installed by the developer in front of footings of towers located in areas vulnerable to vehicular traffic. Dust raised during construction could also increase opportunity for flash-overs.

12-9 Gas and Electric Distribution Comments:. Some relocation of facilities may be required. The existing system capacity is adequate to meet the anticipated loads.

PG&E remains committed to working with the Water District to provide timely, reliable and cost effective gas and electric service to the Guadalupe River area. Please contact me at (408) 282-7106 if you have any questions regarding our comments. We would also appreciate being copied on future correspondence regarding this subject as this project develops. 12-9

Sincerely,

Thomas J. Zlat

Thomas J. Zlatunich
Land Agent

COMMENT LETTER 13

WESTERN WATERS CANOE CLUB

40 Redding Road
Campbell, CA 95008

April 17, 1997

Messrs. Dennis Cheong & Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Subject: Draft Environmental Impact Report/Environmental Impact Statement, Upper Guadalupe River Flood Control Project, Dated January 1997

Dear Dennis & Terry:

Our club has reviewed the subject document and recognize that a lot of work has gone into the generation and publication of this EIR and its associated documents. We feel they do a very good job of discussing many of the issues of concern and the Preferred Project Alternative. However, we believe the documents do not adequately address the Stream Restoration Alternative as well as some other very important topics. For example, it totally fails to address water related recreation issues, such as fishing, boating, aquatic life studies/ observation or property value impacts as a result of the project. It also contains outdated information, many inconsistencies, contradictions and vague, unsupported or inaccurate statements regarding many matters of concern. 13-1

We also have very grave reservations regarding the workability of the proposed project. The Preferred Project's plans and designs are neatly drawn out on paper and are backed by text stating how beneficial the project will be five to seventy five years in the future. But, no objective evidence or data are provided to give any kind of assurance that the project will work as described. The Downtown Flood Control Project is not working as designed or in accordance with the conditions of its permits. The Flood Control Project Downstream of Highway 101 is not working as designed. In view of these dismal track records, we feel there is every reason to fear that the proposed project, which is very similar in design, will only continue this destructive trend of the river's ecosystem. We feel very 13-2

13-2 strongly that not one bit of new flood control work, using hardscape methods, should be permitted any place on the river until the current or recently completed projects are at least working as promised and in compliance with their permits. The six and a half miles of river covered by this project is recognized by every environmental study and publication addressing our river systems, including this EIR., as critical for our declining and threatened aquatic/wild life. It is recognized by all knowledgeable sources as having some of the last remaining quasi natural riparian corridors in Santa Clara County. It not only must be protected, it must be restored and enhanced in accordance with local and state policies.

2. PURPOSE AND NEED FOR THE PROJECT

2.5 REGULATORY AND PERMIT REQUIREMENTS

13-3 Table 2.1 of the EIR lists the different agencies that need to review and approve the project, and lists applicable regulations and permits that are required. However, the Table does not include the Rivers and Harbors Act. We believe that Sections 9 and 10 of this act apply to the project area of the Guadalupe River and permits must be obtained under this act for any work done in the main river channel. The Table also does not list the State Lands Commission. The Lands Commission has exclusive jurisdiction over the bed of all navigable waterways in the State and reviews all projects affecting these waterways for consistency with the Public Trust Doctrine. There is no doubt that the proposed project will further degrade the last remaining salmonid and riparian habitat on the river and, therefore, will violate the doctrine.

3. PREFERRED PROJECT AND ALTERNATIVES

3.2 ALTERNATIVES ELIMINATED FROM FURTHER STUDY

Stream Restoration Alternative

13-4 This section of the EIR states that the Stream Restoration Alternative was considered but was rejected because of substantially greater short-term impacts on vegetation and the high costs of right-of-way acquisition. However, it also states the **objective of this option is the re-establishment of the functions and values of the historic riparian corridor. The goal of the geomorphologic approach is to restore the natural sinuosity of the Guadalupe River channel; enhance sediment transport ; and provide for long term stabilization of the banks by restoring the plan, profile, and geometry of the active channel. It further states that "this alternative would provide an opportunity for significant new riparian vegetation to re-establish and strives to create a functional physical and biological river system that allows natural processes to occur while restoring and maintaining habitat values for fish and wildlife."** This is truly a get well prescription for our waterways. It is exactly what is necessary and the only alternative which can satisfy all of the stated policies and goals of the Santa Clara County and San Jose General Plans. These Plans clearly mandate the protection and restoration of our waterways and riparian habitats while at the same time providing flood protection and reducing maintenance costs. We believe this 13-4

alternative is the only one which will satisfy the goals of the newly established Santa Clara Basin Watershed Management Initiative and succeed in the conservation of our resources in accordance with the goals of the Environmental Protection Agency (EPA), Guadalupe Coyote Resource Conservation District (GCRCD), California Dept. of Fish & Game (CDF&G), National Marine Fisheries Service (NMFS), US Fish and Wildlife Service (USF&WS), San Francisco Regional Water Quality Control Board, (SFRWQCB), the CA Public Trust Doctrine, conservation, recreation and sports fishing groups, and the wishes of the majority of our citizens. 13-5

We do not believe the cost of the Stream Restoration Alternative to be in the neighborhood of $190 million as is stated in the EIR. We do not believe a double bypass channel would be necessary in reaches 7 & 8 as is stated in the EIR. National renowned hydrologist, Dave Rosgen, visited these reaches of the river while teaching applied fluvial geomorphology classes sponsored by the GCRCD each year for the past three years and did not indicate the need for bypass channels in these areas. Regarding construction costs for his Stream Restoration methods, Mr. Rosgen stated in a telephone conversation with the writer on 3/25/97, and again in face to face conversations on April 7-9, 1997, that his construction costs for restoration projects ranges from $6 to $60 per linear foot (Rosgen 1997). At $60 per foot, the construction costs for the entire project would amount to a little over $2 million dollars. Even if the costs were 10 times this amount, the project's construction price tag would only amount to $20 million. It is recognized that this cost does not include construction expenses for bridge replacements, land acquisition and the like. But, even with these fees added, the Stream Restoration Alternative would be significantly less expensive than the Preferred Project or Minimize Vegetation Impacts Alternatives. 13-6

We believe that the other reasons for rejecting the Stream Restoration Alternative from further consideration are not compelling. Even if construction related impacts to wetlands and SRA habitat are greater than under the preferred project, it is virtually certain that long-term impacts to habitat values in the entire watershed would be greatly enhanced if the restoration alternative were implemented. Furthermore, "regulatory uncertainty" exists in any project permitting process, and should not serve as the basis for eliminating an environmentally preferable alternative from further consideration, especially if the alternative is the most likely to comport with the broader regulatory mandates of the permitting agencies. 13-7

The EIR needs to describe the Stream Restoration Alternative in the same amount of detail as the Preferred Project. The designs need to be reviewed and validated and their estimated costs justified by a stakeholder team of engineers, hydrologists, biologists and geomorphologists. Only when the viable options and all of their related construction, mitigation and maintenance costs, as well as other impacts, are objectively presented, evaluated and compared can the best project be selected. 13-8

3.3 PREFERRED PROJECT

13-9 This section of the EIR addresses the Preferred Alternative in separate paragraphs by reach. We question a number of statements and assumptions made in these paragraphs as well as a number of issues not discussed. The EIR states that in most reaches the "natural stream channel would remain undisturbed, except for repair of erosion sites." There is little, if any, **natural channel** remaining in the reaches of the river covered by this project. The natural river channel has been severely modified and degraded over the years, especially during the middle half of this century. Most of the diagrams and sketches in the EIR do not truly reflect the present condition of the river channel. Banks are far steeper, in most cases, than is shown. In Reaches 7, 8, 9 and 10, houses on the west bank are much closer to the river banks than depicted and the banks, for the most part, are armored and failing. In Reaches 9 and 10, the river runs right along the east bank and in many sections of Reach 9 the bank is armored and vertical (Ref. EIR Fig. 4.15-5 Photo's 1, 2, & 5). When there is a riparian area it is less than 10 feet wide so there is no room for a maintenance road as depicted in the drawings. If the project is to be constructed per the drawings, then either the river channel or Almaden Rd. will have to be moved and this is not discussed.

13-10 **Concrete Rubble** - In reaches that have not been armored with gabions, concrete sacks or other hard structures, concrete rubble with protruding and entangled rebar has been dumped along the banks. Over time, this rubble slides down the banks into the river channel, and will only continue to do so unless it is removed. It now clogs much of the channel all along the project area. Concrete rubble is particularly bad in Reaches 6 through 9, Reach 10 C and Reaches 11 A & B and this is **anything but natural,** (Ref. EIR Fig. 4.15-8 Photo 3, Fig. 4.15-9 Photo's 1 & 3, Fig. 4.15-10 Photo 1). This rubble is extremely dangerous to anyone or anything using the river channel or walking its banks. The rubble in the channel snags debris, restricts water flow, changes river hydrology and causes erosion. The rubble on the river's banks prevents establishment of riparian vegetation, which would help protect the bank from erosion, and in most cases weakens vegetation already in place. It is absolutely absurd to even think of discussing a flood protection program without addressing the removal of this rubble from the main river channel and restoring its banks. Erosion and channel obstruction prevention are conditions of permits for all waterway projects. Therefore, we insist that this project be required to commit to removing the rubble as a pre-condition for any construction permits.

13-11 **Fish Barriers** - The EIR addresses the removal of three fish barriers, one at Gage Station 23B (Reach 10B), one at Hillsdale Ave. (Reach 10C) and one at Bryan Ave. (Reach 11B). The removal of these barriers should not be part of this project. The Santa Clara Valley Water District (SCVWD) stated they would remove these barriers by the fall of 1996 as part a Interim Fish Barrier Remediation Project, documented in a report of the same title dated Sept. 1995. Only Gage Station 23B was modified as promised but only after boulder obstructions were removed by volunteers, which negated the need for any work by the SCVWD. At present, Gage Station 23B does not pose a problem for salmonid migration even at low flows. The real barriers to fish migration are the newly formed drop, downstream of Taylor St. as a result of erosion in the Contract 2 area, weirs and drops at and downstream of Old Julian St., the gage weir upstream of St. John St., drops and rubble under I-280, and drops below both Hillsdale Ave. and Bryan Rd. A delay of 10 to 20 years for the removal of the Hillsdale and Bryan Ave. structures per the time phased schedule for these reaches of the Preferred or any project alternative is totally unacceptable. We also believe the SCVWD is under legal obligation, pursuant to Section 5901 of the Fish and Game Code, to remove all barriers to fish passage on streams which it is licensed to appropriate water. By failing to remove these barriers the District is currently acting in violation of the Code. 13-12

In-stream Percolation - The EIR addresses the use of in-stream percolation ponds in Reach 12 of the Preferred Project and talks about modifications to the river to accommodate gravel dams. It addresses the location and operation of two gravel dams, the Branham Lane and Blossom Hill dams. These dams are no longer permitted. The SCVWD's permits for the operation of spreader dams expired in 1994. The operation of in-stream spreader dams have severely impacted riparian areas, aquatic habitat and water quality. They impede salmonid and aquatic life migration and are not acceptable. In addition, they are very costly to operate and can not be legitimately cost justified. Because of their negative impact on our river systems, our club will strongly oppose any attempt by the SCVWD to obtain permits for in-stream dams on any of our primary waterways. 13-13

Shade Cover - The project design for Reach 12 is also unacceptable due to the lack of riparian and Shaded Riverine Aquatic (SRA) Cover. The widened unnatural river channel will cause water temperatures to climb above critical levels for salmonids most of the year. Even 75 years after project construction, this alternative shows the river channel to be devoid of shade cover. This reach must be redesigned and restored to provide main channel shade cover. The Preferred Project also plans to remove mature overstory vegetation in other reaches of the river. Overstory trees provide critical shade to the river, helping to keep the water cool. The loss of this vegetation is clearly evident in Reach 11, which shows a widened channel with no defined low flow corridor. In Reaches 9, 10 A and 11 B and C, the removal of riparian vegetation almost right up to adjacent roadways and the addition of maintenance roads within the project area will enable far more street runoff pollution to directly enter the river. There will be little, if any, riparian vegetation to provide filtration. This is not addressed in the EIR and it is a significant negative environmental impact. 13-14

Overflow Channels - The overflow channel concept needs to be proven before this design can be permitted on this project. Overflow channels are currently part of the flood control projects on the lower Guadalupe River and they are failing in every case. Evidence of this can be seen in the Coleman Ave. to Hedding St. Reach (Contract II), the Hedding St. to I-880 Reach (Contract I) and the Trimble Ave. to Montegue Expressway Reach. These reaches are either seriously eroding or silting up, contrary to design promises and permit criteria. 13-15

13-15 From Coleman Ave to Hedding Street, severe siltation is constantly taking place at the beginning of the overflow channel. This never happened before in this area. Photo's of the site taken in 1976 and 1994 (Attachment 1) show an almost identical shaded riparian habitat which also successfully survived the 1995 flood flows. The concrete weirs, installed after all of the riparian habitat was wiped out, were guaranteed to provide low flow passage for fish. But, they are failing to do so. They started silting up as soon as water was restored to the channel after construction was completed in the fall of 1995. By December they were buried, effectively eliminating the low flow channel at a critical time for fish passage (Attachment 1). There was effectively no low flow channel in this area from mid December 95 until mid October 96. Then, right in the middle of the 96 fall Chinook salmon run, the SCVWD started to remove the sediment, contrary to permits which prohibit the performance of in channel work at this time of year, especially when salmon are spawning. It took crews at least five days to remove the sediment in this small, 100 yard long area. Gravels were piled five foot high prior to their removal from the site (Attachment 1). By the beginning of December the channel started silting up again. By mid December, after the first moderate rain, the low flow channel was completely buried once again, in violation of promises and permit criteria. It should be noted that the revised EIR and Final Mitigation and Monitoring Plan for the Downtown Guadalupe River FCP also promised that vegetation would be established along the gabions and concrete mats in this area as part of the mitigation measures to help keep water temperatures cool (Appendix A). This has not happened as yet nor is it likely to happen. If the SCVWD is forced to comply with requirements to provide a continuous low flow channel, it would have to dredge the channel every few months or after every moderate storm to keep it passable. If this is done, then vegetation will never be able to establish itself as promised. This is a no win, unworkable situation.

13-16 Just downstream of the entrance to the bypass channel below Coleman Ave. there is both siltation and erosion taking place. Photos taken in April 1997 show large mounds of gravel blocking the bypass channel and rising almost three feet high in areas. Downstream of Taylor St. conditions are worse. Concrete mats have been torn up from the project and are scattered about the area. In several areas both north and south of Taylor St. the levees separating the river and the flood plain were breached and there is severe erosion, (Attachment 2). There is also heavy erosion under the Hedding St Bbridge. It should be noted that all of this degradation has taken place this past winter season in the absence of any significant storms.

13-17 Downstream of Hedding St., a series of photos show riparian areas prior to the FCP's construction, during construction and the resulting degradation, (Attachment 3). All of the riparian and much of the upland mitigation plantings, along with their irrigation systems and hundreds of tons of soil washed away with the first major storm of 95. Work was started to repair the damage in February but the March 95 storm washed away all of the repairs and hundreds of tons of additional soil, (Attachment 3). The area continued to erode until repairs were made in the summer of 1996. However, the site started to erode once again this past winter, although to a lesser degree because there were no significant storms. All of the soils which eroded from these sites either washed out to the bay or were deposited downstream where they are reducing the flood carrying capacity of the river, thus jeopardizing populated areas downstream, in violation of permits and the law, (Appendix C). 13-17

Downstream of Trimble Ave. the bypass channel has also failed. The SCVWD vegetated much of this area as mitigation for flood control project's destruction of habitat from I-880 to Trimble Ave. This habitat has been wash out or buried by gravels from the upstream failures. Therefore, the mitigation promised in this area has failed. After several attempts to replace it also failed, the repalcement effort was apparently abandoned and there have been no subsequent attempts to replace the vegetation, as required, by the projects commitments and monitoring plans, (Attachment 4). 13-18

Maintenance - We must seriously question the maintenance aspect of the Preferred Project. The EIR shows up to three maintenance roads along the river in certain sections. This is totally unnecessary. What the river corridor needs is vegetation, not roads. Natural river systems do a very good job of maintaining themselves. In many sections of the river there is no room for maintenance roads unless the river channel or adjacent roads or houses are moved. This is not addressed in the project description or depicted in the EIR's drawings. By designing maintenance roads into the Preferred Project, maintenance will be a self fulfilling need. The roads and access ramps will have to be maintained and in most cases vegetation will be controlled via the use of herbicides. 13-19

The EIR states that maintenance under the Preferred Project includes less extensive sediment removal and less chemical vegetation control. This is totally contrary current practices on the Lower Guadalupe FCP areas and contrary to logic. All of the new bypass channels, access ramps and maintenance roads will have to be maintained, as will all of the hardscaped areas this alternative proposes. The EIR does not address specific maintenance tasks for this project, how they will be performed or the cost of such maintenance. The Engineer's Report does contain a Table of Annual Maintenance Cost Estimates, but these figures are totally unrealistic, based on the maintenance required for the downstream projects, (Appendix C). Actual maintenance costs in each one of the very short Contract 1 and 2 Reaches of the Downtown FCP have to far exceed the estimated costs stated for the 6.5 miles of this project. The sediment removal effort which took place in the 100 yard stretch of river downstream of Coleman Ave. last October had to exceed the $15,000 amount estimated for one year of sediment removal for the entire 6.5 stretch of the Preferred Project. It took at least a six man work crew and heavy equipment about five days to do the job and this was only a small fraction of the work necessary in this Reach. As stated previously, much of the permit mandated maintenance work in the Contract 1 and 2 areas is not being done as required. 13-20

In view of the above, we request that the actual maintenance costs, including levee repair efforts, for each of the following Reaches of the Lower Guadalupe FCP be provided for the past five years: Contract 1 (Hedding St. to I-880), Contract 2 (Coleman Ave. to Hedding St.), Trimble Ave. to Montegue Expressway and Montegue Expressway to Tasman Ave. We also request that realistic estimated maintenance costs for each of the Alternative Projects, 13-21

13-21 including the Stream Restoration Alternative, be provided in this EIR for comparison purposes.

13-22 The EIR states in the Routine Maintenance Procedure Section that "in general, native vegetation would be removed or restricted in height in a 25 foot wide corridor, centered on the existing low flow channel, in Reaches 6 to 12 and on a 50 foot wide corridor in Reach A in order to maintain flood capacity." This is contrary to the claims made in previous sections of the report which repeatedly state that the natural stream area would remain undisturbed except for erosion sites. Most of the drawings also show trees along the existing river channel to be more than 25 feet high. What is really being planned with regard to riparian vegetation?

13-23 **Mitigation Banking** - The EIR admits that with the Preferred Project, main stream erosion and bank failure will continue and proposes that an off site mitigation bank be established so that as the banks fail, repair can be completed with concrete or other hardscape material. It is planned that mitigation for this further denuding of the riparian corridor can be satisfied by off-site plantings. This is not acceptable. Embracing this logic, eventually the entire river will be hardscaped. This piecemeal degradation of the river by the Preferred Alternative can not be allowed.

3.4 MINIMIZE VEGETATION ALTERNATIVE

13-24 The EIR states that the Minimize Vegetation Impacts Alternative was developed to minimize impacts to the riparian corridor that would be associated with the Preferred Project. We feel that this option would be an improvement over the Preferred Project. However, there is not enough information provided to perform a proper evaluation of the alternative and it still has many of the same problems as the Preferred Project.

3.6 IDENTIFICATION OF ENVIRONMENTALLY SUPERIOR ALTERNATIVE

13-25 Based on the above, we believe the Stream Restoration Alternative to be the Environmentally Superior Alternative per the CEQA Guidelines and NEPA statutes. At the very least, we want this alternative described and cost estimated by an impartial qualified team of experts and evaluated in a comparative fashion in the EIR with the Preferred Alternative, as required by CEQA/NEPA.

4. AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

4.2 SURFACE AND GROUND WATER HYDROLOGY

13-26 This section of the EIR again talks about the SCVWD's in-stream recharge program. As was previously stated, this program no longer exists, it was halted in 1994.

It is interesting to note that the EIR states that the "**proposed project would not completely eliminate the threat of flooding within the project** area but would greatly reduce the threat of flooding from all but the most extreme event." The main problem with Flood Control projects is they can't control floods. All they do is attempt to contain and accelerate water flow which makes matters worse. This causes erosion and bank failure. Most such projects eventually fail and when that failure occurs, the effects are catastrophic. Instead of predictable flood waters gradually rising in a flood plain area, water rushes, unpredictably, through a failed levee or breached bank with great velocity and force placing lives in jeopardy and causing far more damage to anything in its path. There have been many cases in California alone where rivers engineered to carry a hundred or two hundred year flood failed to carry a fifteen year event. In 1992, the Federal Interagency Floodplain Management Task Force stated that structural flood control work in the U.S. exceeded $25 billion yet flood damages were steadily increasing and were exceeding $2 billion per year (Williams 1994). In the case of San Jose, high tech industry that has been lured to build in the flood plain under the false promise of flood protection will be devastated at tremendous cost when such a flood happens. In local flood control project meetings various officials constantly state that the flood control project must be completed so flood plain maps can be re drawn. This will reduce or eliminate the need for businesses and people in the flood plain to obtain and carry flood insurance. This is pure foolishness and such statements are irresponsible at best. Lines on maps don't change land contours and don't guarantee levees. A constrained and restricted river will eventually break free and when the floods finally come, destruction will be far greater and the costs far higher than ever before. 13-26

4.3 WATER QUALITY

This section of the EIR states that substantial degradation of water quality, including increased erosion, sedimentation, pollution and water temperatures are considered significant impacts under CEQA Guidelines. The Preferred Project will increase water temperatures due to the widening of the river channel, especially in Reaches 11 and 12, and the removal of riparian vegetation. The thermal impacts of lost overstory vegetation will be more severe until such time as mitigation plantings start to mature, which could be as long as 20 years. 13-27

We also believe the Preferred Alternative will drastically increase the use of herbicides, not decrease it as a benefit of the project, as stated in Chapter 3. The Preferred Project plans to install many miles of maintenance roads and access ramps and these are maintained using herbicide. Section 4.3 of the EIR states that "the roads would result in the increased use of herbicides for pre-emergent vegetation and would transfer the use of herbicides from the top of the bank to the depressed roads closer to the river." This is totally unacceptable. 13-28

Over the past several years we have observed and volunteers have video taped SCVWD employees haphazardly spaying herbicides all along the lower Guadalupe River riparian areas. They even sprayed the river channel while salmon, turtles and ducks were in the area. We feel this is totally irresponsible, if not illegal, and this activity was reported to the CA Dept. of 13-29

13-29 F&G. Deliberately spraying chemicals in our waterways is no different than throwing motor oil or any other chemical substance in it. It is a pollutant and must be treated as such. While some claim that herbicides are harmless to humans and animals, we doubt this is the case. Why do the labels on most bottles clearly caution to keep children and pets away from sprayed areas? We want the EIR to clearly state what type and quantity of chemicals will be used for vegetation control, exactly where they will be used and how they will be applied. At the very least, the use of herbicides has to be considered as a significant negative impact for this project per CEQA Guidelines and their use must be severely restricted. For comparison and evaluation purposes, we request that the type, quantity, location and time of all herbicide usage on the Guadalupe River for the past two years be included in this EIR.

4.5 LAND USE AND GENERAL PLAN CONSIDERATIONS

13-30 This section of the EIR discusses the San Jose and Santa Clara County General Plans but it doesn't state how the Preferred Project will comply with the stated policies of protecting and restoring the riparian corridor and the river to its natural state.

13-31 The EIR talks about the possible establishment of a trail in the Guadalupe River Corridor Park but it doesn't discuss other recreational uses of the entire river corridor or access to the river for such purposes as fishing, boating or nature studies. The San Jose Riparian Corridor Policy Study commits to provide river access for boating and other recreational purposes and the EIR needs to address this issue.

13-32 The EIR is inconsistent in its statements about public access to the riparian areas for recreation. Although this section touches on the subject of trail access, all of the drawings and Reach descriptions in Chapter 3 show and talk about the erection of fences on both sides of the river. This is not acceptable. Many of our waterways are currently fenced off with chain link fences and locked gates. Signs posted along these fences indicate the area is the private property of the SCVWD and no trespassing is allowed. We question the validity of these signs. The SCVWD is a public agency, it is funded by both state and local tax dollars, the District's flood control projects are also funded by federal, state and local tax dollars. Therefore, the public has a vested interest in any properties or projects funded by such money. Fences are expensive to erect and maintain and are outright ugly. They are a waste of money and cause problems. Fences do not stop vagrants, addicts, taggers, poachers or polluters, they only serve to enable their illegal activities by providing them isolation and cover. Fenced off areas only serve to keep responsible citizens from enjoying recreational activities along the river corridors which are owned by the city or acquired by the SCVWD with tax dollars.

4.6 SOCIOECONOMICS

13-33 The EIR does not discuss property values as a result of the project. Were they considered as part of the cost benefit analysis of the project? A mid 1980 analysis of property values of homes located on natural river channels vs channelized river sections on the Portage River in

Ohio indicated that "homes constructed on a natural stream, above the flood plain, were assessed to be worth 331% more than homes built on channelized streams." (Schurr 1986) This could have a substantial cost impact on homeowners along the river and needs to be addressed and publicized. The Stream Restoration Alternative has the potential of providing homeowners near the river with much higher property values than they will have living alongside a hardscaped river or bypass channel. 13-33

4.11 PUBLIC SAFETY

This section of the EIR states that "Public Access to the River Channel will be Limited by Installing Fencing and Posting Signs." This is inconsistent with statements made in other sections of the EIR regarding trail access. Fenced areas provide refuse for those committing illegal activities and polluting our waterways. They cause more of a safety problem than enhancing safety. All one needs to do is take a quick look at the river to see that, in most cases, fenced off areas of the river are far more trashed than open areas. We do not object to a low barrier or fence to keep vehicles out of the riparian or vegetated areas or small children from falling into the water. But such a barrier or fence should allow adults easy access to the corridor and waterway, at least at established locations. The California Constitution, legislative codes, case law and the Public Trust Doctrine all guarantee the public the right of way and access to public trust property and navigable water, so it is illegal to deny responsible citizens access to these resources. 13-34

4.12 VEGETATION

The EIR correctly states that historically, substantial losses of natural vegetation have occurred on portions of the Guadalupe River. It also correctly states that vegetation has been extensively altered by a variety of land uses, from Curtner Ave. to Blossom Hill Road. However, it does not indicate that the primary reason for the lack of vegetation and shade cover in these areas now is primarily due to actions and policies of the SCVWD. Flood control and in-stream recharge projects in these areas have devastated vegetation. The areas are now routinely sprayed with herbicide to prevent vegetation growth, in most cases for no valid reason. Citizens groups desiring to voluntarily re vegetate these areas have not been permitted to do so. The EIR states that vegetation throughout the project has been degraded or altered by the dumping of debris all along the banks. It does not state that the SCVWD or its predecessor is primarily responsible for dumping this debris and rubble in the guise of erosion control and flood protection or that it's routine dewatering of the river has stressed or killed much riparian vegetation. It is long past the time to reverse this course and to begin the process of restoring the river. Unfortunately the proposed project will only continue the destructive trend. 13-35

The EIR states that the "proposed maintenance program incorporates several measures that would protect and enhance the riparian system, including leaving the bases of native plants in place where possible to allow 10 feet of growth until the next trimming and removing non- 13-36

13-36 native trees and shrubs completely." This is contradictory to maintenance statements made in other parts of the EIR. In one section the EIR states that vegetation in the main channel will be left undisturbed where ever possible. In another section it states that tree size along the main channel would be limited to 25 ft. in height. It states, in this section, that vegetation will only be permitted to grow to 10 foot high and all non-native vegetation will be removed. This seems to indicate, if there is no native vegetation in the area, the SCVWD is free to remove everything. This is not acceptable. What will really be done? The EIR also states that implementing the Proposed Project may cause declines in the cover, density, height and vigor, and native species diversity in Reaches 6-12 which would become apparent only in the long term, due to the removal of substantial amounts of adjacent riparian forest." It further states that the full extent and character of this impact cannot be identified without extended monitoring before and after project construction. Because of the already degraded nature of the riparian habitat in project reaches and the fact that it is some of the last remaining habitat on the river, no chance can be taken that the project may further degrade it. As previously stated, the riparian zones must be restored not degraded.

13-37 Under the mitigation section of this heading the EIR refers the reader to Plates V-41 through V-53. It is interesting to note that Plates V-42, V-46, V-51 and V-52 show pockets of riparian re-vegetation far outside of the riparian zone, in many cases on the far side of the dry bypass channels. How can this be? Riparian vegetation, by definition, obtains its moisture from the river system. Vegetation outside of the riparian zone must be classified correctly as upland vegetation.

4.13 WILDLIFE

13-38 This section of the EIR reiterates that the riparian zones in Santa Clara are some of the most important habitats in the valley and that they support the most dense and diverse wildlife communities in the valley. It states "riparian vegetation along the Guadalupe River constitutes one of the last remaining significant areas of habitat in the region."

The EIR states that both quantitative and qualitative wildlife surveys were conducted from January 1986 to January 1987 on most of the project reaches of the river. Although the report also states more recent surveys were performed, it appears the most comprehensive studies are over 10 years old. These studies as well as other outdated information in the EIR need to be

13-39 updated. The EIR talks about the impacts of the in-stream percolation ponds which no longer are in use. The report talks about the degraded habitat in many areas but fails to mention that

13-40 the reason for the degraded habitat is the SCVWD's continued spraying of many sections of the river with herbicide to kill off vegetation and their dewatering of the waterways

13-41 The EIR fails to recognize all of the water fowl which occupy the area, e.g. coots, mergansers, and cormorants are not mentioned. It fails to mention the ospreys that have been observed photographed and video taped hunting the project area over the past few years. Three ospreys were observed hunting in Reach A in the fall of 1996, and two were paired off. At least one bird has been observed hunting the reach for the past two years, so it must reside somewhere in the area. The report indicates that there is no breeding habitat and only marginal foraging habitat for southwestern pond turtles and none were observed through 1995. The GCRCD had southwestern pond turtle expert, Dr. Dan Holland of the Western Aquatic Turtle Research Consortium, survey the downtown stretches of the river in July 1994 and he identified both breeding and foraging habitat for the turtles in Reaches A and the Contract 1 and 2 areas, (Holland 1994). Southwestern pond turtles have been observed, photographed and videotaped all along the river from Almaden Expressway to Trimble Ave., although from I-880 to below Trimble Ave. there are also numerous non native red ear turtles. 13-41

In discussions about the impacts of the project on wildlife habitat, the EIR is inconsistent. In one location it states the "impact is considered less than significant because the proposed project would reduce the extent of clearing vegetation from pre project practices." In other sections it states "implementing the project would increase wildlife fragmentation along the Guadalupe River corridor by removing riparian vegetation in each reach of the river." It also states that "Operational impacts could result from changes in maintenance activities associated with the project. These impacts could result from periodic vegetation removal or trimming that is more extensive than at present." The inconsistency of the above statements make it clear that either no one is sure about the extent of the impacts on wildlife habitat by this project or there is an attempt to downplay the true impacts. 13-42 As part of the mitigation measures for the project's negative impact to the habitat, the EIR recommends the SCVWD establish an integrated vegetation mitigation plan, a public education program and a vegetation protection plan for the riparian and urban forest. This is a complete waste of time and money. There are plenty of vegetation protection plans and policies already in place. The SCVWD publishes many booklets, e.g. Stream Care Guide for Santa Clara County, and newsletters talking about the protection of our waterways and the riparian areas. But they don't practice what they preach. Most of the public is very aware that if you destroy the habitat there will be no aquatic or wildlife. All of the plans in the world are not worth the paper they are written on if no one abides by them. What we need to do is to stop the removal of the vegetation and restore the river and its habitat in accordance with existing plans, policies and laws. A **restoration program** needs to be undertaken as soon as possible, based on an approved restoration plan, to compensate for habitat losses already caused by flood control efforts, and to return our waterways to natural functioning systems. 13-43

4.14 FISHERIES

The EIR addresses fisheries in a fairly comprehensive manner, however some very important information has not been included. Under fish species know to occur within the project area the EIR fails to list Silver or Coho salmon. These fish are listed as threatened and are known to have occurred within the project area. Historic records state that south bay waterways had runs of King and Silver salmon and Steelhead trout. These fish were part of the main diet of local natives and because the spawning runs occurred at different times of the year the supply of fish was almost continuous (Heizer & Elsasser 1980:65) (Appendix D). Long time 13-44 residents of the area also have categorically stated that they have observed Silver salmon in the Los Gatos Creek as recently as four or five years ago. One 80 year old resident, G. Garbarino, who has a business on Los Gatos Creek and has lived on Los Gatos Creek and the Guadalupe River his entire life stated he caught a Silver salmon on Los Gatos Creek several years ago. He also stated he observed these fish spawning in the creek just about every January and February except in drought years as long as he can remember. When he was 13-44 younger, he said he use to pitch fork Silver salmon out of the creek as they would spawn in the water right behind his business on Autumn St., (Garbarino 1996). In 1995, while canoeing Los Gatos Creek in early February, the writer and his partner observed what was believed to be a 20 to 24 inch pinkish salmon in a riffle area just downstream of Bascom Ave. The fish could not be positively identified but it was either a Coho or a winter run Chinook. The writer also has seen video taken in January 1994 which shows a fairly fresh salmon, believed to be a Coho, caught on the Guadalupe River.

Steelhead and Rainbow Trout - The EIR states that little information exists on the historical and current distribution and abundance of Steelhead trout in the Guadalupe River system. We believe there is a lot of information on these fish, although much of it has either not been published or is in obscure records. Historic records located to date do indicate that Steelhead were plentiful in south bay waterways at the time the Spanish settled the area, 13-45 (Appendix D). Long time resident fishing enthusiasts all state that the Guadalupe River system was full of Steelhead years ago, and some have photographs to document their catches (G. Garbarino, K. Anderson, F. Cucuzza, B. Heft, S. Christiansen). More recently both the writer and Silichip Chinook have video taped numerous Steelhead trying to jump the drop structure behind the SCVWD building upstream of Blossom Hill Ave. in 1996. The writer also has a photo of a large Steelhead caught above the Blossom Hill drop structure on Guadalupe Creek, along Coleman Rd. in 1994.

Chinook Salmon - The EIR states there is no historical account of Chinook salmon migrating and spawning in the Guadalupe River. This is not correct. As referenced above, historical records do tell of Chinook salmon, using and spawning in south bay waterways when the Spanish settled the area, (Attachment D). Long time residents also state that salmon were plentiful in the river system many years ago. Local resident and business owner, G. Garbarino stated that he observed both King and Silver salmon in the Guadalupe River system for over the past sixty years, (Garbarino 1996). Many long time riverside residents indicate that they have observed salmon in the river system for many years although they couldn't tell 13-46 if they were Chinook or Coho, (N. Morano, J. Altieri). Many old fishermen also confirm there were salmon in the river for the past 50 years. A retired local sheriff's officer now living outside the area told his grandson that salmon were so plentiful when he was young that people use to pitch fork them out of the river, (P. Stark). One resident, stated that he and his friend caught a spawning salmon on Los Gatos Creek with their bare hands when he was attending Del Mar High School in the early 1970's, (B. Collins). In the 1980's Chinook salmon were documented in the Guadalupe River system in news articles and surveys done by CA Dept. of F&G and the Habitat Restoration Group. In the 1990's hundreds of Chinook salmon have been well documented, photographed and video taped spawning in both the Guadalupe River and Los Gatos Creek. 13-46

The EIR states that genetic testing of the Guadalupe River Chinook salmon was initiated by the DFG in 1994. Actually, genetic testing started in 1993, when samples were taken by Silichip Chinook volunteers at the request of the DFG. This sampling was continued in 1994 in parallel with the DFG's efforts. The results of the 1993 genetic testing indicated that the first eight samples did not match any known hatchery fish and the first samples from the 1994 sampling indicated the same results, (Nielson 1995, Appendix E). Dr. K. Jones of Genetic Identification Services stated in December 1996 that there is still not enough information to positively identify the origin of a salmon, (Jones 1996). This confirms the EIR's statement that "genetic analysis to date have been inconclusive." But, conflicts with the EIR's statement that 21 fish have been identified as Merced and Feather River hatchery stocks. 13-47

We believe, based on the hundreds of fish we have observed over the past five years, that the majority of the Guadalupe River system salmon are most definitely not stray hatchery fish. On average, the Guadalupe River fish are reportedly larger than most of the hatchery fish returning to their place of release to spawn. None of the hundreds of fish we observed have had a clipped adipose fin and all of their fins were well formed and in good condition before spawning. It is possible that a few fish may be hatchery strays or that some may be offspring of hatchery fish, perhaps 2nd or 3rd generation of fish, which mated with wild fish. But there can be no doubt that the Guadalupe River fish are unique. It is well known that most Chinook salmon prefer large, long rivers for spawning, but there are a very few stocks of short-run Chinooks (PCFFA). The Guadalupe River is very short and we have observed salmon spawning just yards above tide water for the past several years. This would be extremely abnormal behavior for a long river run fish. B. Streiff, NRCS regional fish biologist, supported this belief when she stated, after surveying the Guadalupe River salmon in 1995, that she believed the fish were unique and special, (Streiff 1995). 13-48

Even if most of the salmon in the Guadalupe River were hatchery fish descendants, the fact that they are spawning and surviving in the river means they need to be protected. We feel that until there is positive scientific evidence that the fish are direct hatchery strays they can not be considered as such and must be treated as a unique and special. Extinction is forever, and we can't risk the elimination of these hardy fish due to the project's destruction or further degradation of their habitat and unkept/unworkable mitigaation promises.

Guadalupe River, General Characteristics - The EIR states that Snyder (1905) indicated that historically all streams of the region shrank rapidly and only one of them, Coyote Creek discharged water into the bay during the entire summer. The article does not state that the Guadalupe River did not discharge water into the bay in the summer, it does not address rivers. Every other history book of the area indicates that the Guadalupe River flowed year around. The fact that it was a perennial waterway was the main reason that San Jose was founded along the Guadalupe River, (Appendix F). Until at least the 1900's the river was 13-49

13-49 used to transport goods all year long down to the port town of Alviso, (Appendix F). History books also document water powered grist mills operating on the Guadalupe-River, above its confluence with Los Gatos Creek. Such mills would not be built on a river that was dry part of the year. In addition, long time Guadalupe River system residents, have stated that in the past 70 years they have never seen the Guadalupe River go dry north of downtown San Jose.

13-50 The EIR again talks about the operation of spreader dams along the Guadalupe River in this section, but as was previously stated they are no longer in operation.

Environmental Consequences/Impacts and Mitigation Measures

13-51 **Construction Impacts** - The EIR states that proposed channel modifications would result in long term benefit to fisheries resources (particularly anadromous species) and that tributary streams contain better conditions for spawning and rearing, compared to the Guadalupe River. While removal of the barriers along the river would help fish migration, the lower portion of upper reach tributary streams do not provide better spawning and rearing conditions for salmonids than the Guadalupe River. In fact they are far worse, they exhibit very high temperatures, very low flows, are devoid of shade or hide cover, and contain blockages so fish are unable to migrate to the upper portions of these creeks which do have better conditions.

13-52 The EIR also states that it is assumed there would be a permanent loss of riparian vegetation from channel widening and bank stabilization activities. This would result in short and long term loss of physical habitat features, possibly increasing mean water temperature, from loss of shade, and reducing habitat complexity. It is a proven fact that water temperature increases as shade cover is removed. Water temperatures are already at critical levels for salmonids, a degree or two elevation could severely impact their survival ability, this is unacceptable.

13-53 The report indicates that in-channel construction would be permitted from April 15 to October 15. Chinook salmon start migrating up the river as early as August and start spawning in October, so construction in the channels after August 15th should not be permitted. Young Chinook salmon could still be out migrating in April and early May and Steelhead and Coho young need to remain in the river the entire summer. Construction should not be permitted in the channel until after May 1st, at the very earliest, and then only after a comprehensive survey has been made of the area by a qualified fish biologist to confirm the absence of salmonid young in the construction areas.

13-54 The EIR states that there will be no impacts to state or federal listed special status fish species because no listed species occurs in the project area. However, Coho salmon are listed as threatened and Steelhead are on the verge of being listed, species and they have been seen by local residents and even caught by old time fishermen between the project areas.

13-55 **Operational Impacts** - The EIR states that the proposed maintenance program would potentially increase stream side vegetation coverage and densities which could increase the real coverage and density of SRA cover. These statements are not consistent with previous statements that indicate the riparian habitat will not be disturbed in one case and in several other cases indicate the riparian habitat will be heavily degraded. It is very difficult to understand how stream side vegetation will be increased when the EIR states the present corridor is not going to be disturbed and it is mostly lined with hardscape or concrete rubble. Again, the EIR talks about the operation of spreader dams which are no longer used. More specific details need to be provided on exactly what is going to be done, when and how it is going to be accomplished and how its success will be assured. 13-55

Preferred Project - The EIR indicates that one of the project's beneficial impacts will be the increased habitat for migrating Steelhead and Chinook salmon because of the removal of barriers at Hillsdale Rd. & Bryan Lane and the further modification of Gage Station 23B. This should not be considered as a beneficial impact for this project as the SCVWD stated in an Interim Fish Barrier Remediation Project, dated September 1995, they would modify or remove these barriers by August 1996. Only Gage Station 23B was modified, after citizen volunteers removed the boulders blocking fish passage. Once the boulders were removed the gage station no longer impeded salmonid migration so further modification is not necessary.

The EIR also states that providing fish passage over the Blossom Hill Dam is a beneficial impact of the project. While providing fish passage over the dam is an good thing, it has nothing to do with the project. F&G Codes require any owner of a dam to provide fish passage around or over a dam, so the SCVWD should have been doing this all along. Fish passage around this structure was mandated by a court settlement in September 1995 as a result of the SCVWD's dewatering of the river in August 1994, which has nothing to do with this project. The EIR states the main purpose of providing fish passage over the dam is to provide salmonids additional spawning habitats. However, the 2.9 miles of extra habitat that will be provided by the passage is currently not suitable for salmonid spawning. 13-56

At the present time the habitat and temperature conditions in lower Alamitos and Guadalupe Creeks are not suitable for salmonid spawning. These creeks are very shallow, only several inches deep, and lack any shade cover, so their temperatures are far too high for successful spawning. Data loggers on the lower portions of both creeks indicate large fluctuations in temperature which typically reach into the mid 70's (Fahrenheit) during a sunny afternoon, even the in the late fall and winter months. Thus, until such time as these streams are restored with adequate shade cover so that suitable temperatures prevail they can not be considered as potential spawning areas for salmonids. 13-57

It is also questionable if providing a fish passage at the Blossom Hill drop structure will provide any more habitat for Chinook salmon. Most Chinook salmon are long river, main stem spawners, as indicated in most literature and confirmed by B. Streiff, although there is a small population that prefer short rivers (PCFFA). The Guadalupe River salmon have been observed spawning just a few yards above tide water and all of the way up the river to Blossom Hill Rd. but, we have no records of them trying to jump the Blossom Hill Dam. 13-58

13-58 However, Steelhead have often tried to jump the structure and some have even been successful during high flows. So it is very questionable if Chinook salmon would attempt to spawn in the creeks even if the habitat was suitable. Further more, most Guadalupe River salmon are very large fish, exceeding two feet in length, many are in the three foot range and some are even four foot long. Fish much larger than 24 inches would not be able to access the creeks, even if they were so inclined, unless the water flow was substantially increased. Creek habitat above the Blossom Hill Dam can nct be considered as salmonid habitat, at least at this time, until adequate SRA cover and aquatic habitat is restored and water temperatures are lowered to acceptable levels. These are just a few more reasons why none of the little remaining salmonid habitat in the Guadalupe River can be degraded by this or any project. The tiny amount of habitat remaining must be protected and even enhanced.

13-59 In addition, it is interesting to note that between the Blossom Hill Dam and the Mason Dam there were five in-stream percolation dams in operation (from April 15 through October 15) until 1994. Although these dams are now no longer permitted, other chapters of the EIR talk about in-stream spreader dams, as if they were still in use. The SCVWD has strongly hinted in the EIR that they will try again to obtain permits for their operation, Ref. the discussion on percolation pond operation on page 4.14-16. If spreader dams are part of the Preferred Project's design, why are the impacts of these dams not discussed in conjunction with the mitigation plans to entice salmonids into Guadalupe Creek. The operation of the 5 spreader dams referenced above would eliminate all spawning and rearing possibilities for salmonids in the creeks.

13-60 The EIR describes the potential for reduced fish migration and spawning success in the river due to changes in hydraulic characteristics because of the bypass channels. It also discusses the potential for reduced channel maintenance flows and gravel flushing flows. We do not disagree with the statements made in the EIR regarding the theory of the operation of the bypass channels but we question the proper operation of the main channel. As pointed out in previous sections, the main channel is not natural. It has been straightened and is loaded with concrete rubble. It does not function as a natural and stable river channel. According to D. Rosgen, until the main channel is returned to a natural and stable condition it will continue to have erosion and sedimentation problems, will not carry its natural bedload and thus will have a negative impact on salmonid spawning (Rosgen 1997).

13-61 **Mitigation Measures** - Mitigation measure F-1 discusses the construction of artificial undercut banks to take the place of natural banks. Is this a proven technique? From the discussion in the EIR it doesn't seem that way. Artificial methods have an very poor track record for accomplishing desired goals and are extremely expensive. There needs to be a history of success for any technique used to mitigate for a loss. Because this small stretch of river is all of the decent habitat that remains for the salmon, experimenting and waiting up to five years to see if the mitigation is working is unacceptable. To make matters worse, there is no stated remedial action, other consulting with F&G and USF&WS after a five year period, if the mitigation fails. This is also totally unacceptable. Mitigation efforts in Contracts 1, 2 and 3 of the Downtown Flood Control Project, an on the Lower Guadalupe River Flood Control Project are failing and no only has there been nothing done to replace the lost mitigation, there has been no corrective action to fix the cause of the failure, (Appendix A & B), (Attachments 1 to 4). There is nothing to assure that compliance with mitigation requirements will be mandated on this project. 13-61

The EIR states that the SCVWD will improve fish passage conditions on Guadalupe Creek as mitigation and that salmon and Steelhead trout will be provided with 2.6 miles of stream habitat above Mason Dam. Where will the money come from to provide the bypasses and restoration discussed in this section? This area is not a part of the project. In addition, as previously stated it is questionable if Chinook salmon would even use Guadalupe Creek for spawning. 13-62

The temperatures below Mason Dam are far too warm and the flow is far too low for large fish, and may not be desirable for mainstream spawners. Although there is excellent habitat and cold water above Camden Ave. only fish in the two foot or smaller range will be able to get there under present conditions if the dam is removed or bypassed. 13-63

WATER RECREATION

The EIR does not address water recreation to any degree and how this project will impact it. The San Francisco Bay Basin Plan indicates that one of the beneficial uses of the Guadalupe River System is for non contact water recreation. The Public Trust Doctrine states our river systems and resources are held in trust for public use and one of those uses is for recreation. The United States and California Constitutions, California Civil Codes and both Federal and California case law state very clearly that citizens rights to access and recreate on our navigable waterways can not be denied. We want to see this issue addressed. Our club is a recreation club that enjoys paddling our waterways. We have adopted a section of the Guadalupe River and have sponsored and participated in many clean ups along the river system. Canoeing is a non consumption, non polluting, low impact sport using water craft similar in size and design to those used by area natives. Members of our club have paddled the Guadalupe River system, including Guadalupe Creek from Camden Ave. and Coleman Rd. and the Los Gatos Creek, from Camden Ave. all the way to Alviso, (Attachment 5). 13-64

At moderate to high flows the river can be paddled, without portage from the Blossom Hill Dam to San Francisco Bay, Appendix G). However, because of all of the debris and trash in the river, it is not very scenic and could be very dangerous. Under present conditions only experts, who know the river should attempt to paddle its upper reaches, although the reaches below I-880 can be paddled in relative safety most times of the year except during flood flows. Our club is working to get the river cleaned up and restored to a more natural state so that our members and other citizens can enjoy a larger portion of this public resource. We want to assure that the proposed project does not further impact our use of this resource. 13-65

5. CUMULATIVE IMPACTS

13-66 This chapter discusses the cumulative impacts of many of the projects along the river but it does not discuss them all. It doesn't discuss the planned development project downstream of Highway 237, the Lower Guadalupe River Flood Control Project and how it and its mitigation is failing or the SCVWD's stated plans to reapply for permits to construct in stream spreader dams along the river and creeks.

13-67 Most of the mitigation plantings along the Trimble Ave. to Monteque Expressway Reach of the Lower Guadalupe Flood Control Project have failed and they have yet to be replaced, (Attachment 4). The report talks about the Downtown Guadalupe River Flood Control Project but it does not state that the majority of its riparian mitigation in Contracts 1 and 2 has either not been planted or is failing, (Attachments 1 - 3), (Appendix A & B). 13-68 It does not state how it has not provided the low flow channel for fish as required and that the bypass channels are both silting up and eroding. There has not been one riparian tree re-planted along Contracts 1 and 2 as yet although some upland mitigation is starting to take hold. 13-69 The statement that mitigation for the SRA habitat is now being reevaluated only means that the promised mitigation is a long way off. 13-70 The EIR addresses the River Park Project but it doesn't say the mitigation plantings along the west bank gabions in the southern end of the Contract 3 have failed and have not been replanted. 13-71 The report does not discuss all of the trees recently cut down at the top of the levees along the west bank of the river in Reach A of this project.

13-72 On page 5-2 the EIR states that wetlands and jurisdictional waters of the United States will not be affected by the project. But on pages 4.12- 25 & 26 it states that 1.85 acres of wetlands and 10.16 acres waters will be impacted. Which is correct?

13-73 The EIR describes many of the impacts to the Guadalupe River System and lists them in Table 5.3. However, it doesn't list them all. It doesn't list the dumping of concrete rubble all along the river and creeks. It doesn't list the operation of the in-stream spreader dams which drowns upstream vegetation and water starves down stream vegetation. 13-74 It doesn't list the dams and drop structures built along Los Gatos Creek, below Vasona Reservoir or the Mason Dam on Guadalupe Creek. 13-75 It doesn't list all of the concrete, concrete sacks, gabions and other hardscape materials used all along the rivers and creeks. The negative impacts listed in Table 5.3 and the above leaves no doubt that more than enough damage has already been done to this small river system. It just can not tolerate any more degradation and still provide a home for native fish and wildlife as it does now. Our rivers and creeks have continually been devastated by man's irresponsible actions and it is long past the time to correct these misdeeds. This last remaining section of the Guadalupe River must be protected and restored. It can not be further degraded by flood control methods that are not working or are unproven.

13-76 The EIR states the loss of SRA habitat in the Downtown area will be fully mitigated. But, it doesn't say when or where this will happen. Mitigation for the SRA and riparian losses in the

Downtown area have not even started yet and no one will commit as to when they will. It is our position that no other losses should be permitted until the mitigation for the current projects are in place and prove to be successful. 13-76

The EIR again states in this section that the river blockages at Hillsdale, Bryan and Gage Station 23 B will be removed as part of the project. As previously stated this should not be part of this project. It also restates that mitigation will be provided on the creeks upstream of the Blossom Hill Dam. Again, we restate, that at present, these areas are **not suitable** for salmonids as there is no shade cover, the temperatures are far too warm and the water flows are far too low. The EIR does not state how the areas will be made suitable. It is also questionable if Chinook salmon would or could use these small, low flowing creeks. 13-77

The Cumulative Impacts Analysis is deficient because it assumes an acceptable level of mitigation by the Downtown Project. In the fisheries subsection of the Cumulative Impacts Analysis section, specifically on pp. 5-2 and 5-14, the document acknowledges that the downtown GRFCP "will affect approximately 9,800 linear feet of SRA habitat; however, impacts on SRA habitat and mitigation sites are being reevaluated." The EIR also states on p. 5-2 that the Corps' final mitigation and monitoring plan for the downtown project "is being revised to address a number of issues, including impacts on shaded riverine aquatic (SRA) habitat." Finally, on p. 5-14, it states that "Loss of SRA habitat from implementing the Downtown Guadalupe project will be fully mitigated." This is misleading. The DFG and USFWS have demonstrated that full mitigation is not feasible under the current SRA mitigation package, and have so informed the Corps. The EIR's conclusion that "the cumulative impact of removing streamside vegetation is therefore considered less than significant, and no mitigation is required," is therefore unsubstantiated. 13-78

Finally, Mitigation Measure Cf-1, which includes providing fish passage at the gabion structure on Alamitos Creek upstream of Mazzone drive, is already part of the SRA Mitigation package for the Downtown Project. It is inappropriate for the District to claim this action as mitigation for both projects. 13-79

SUMMARY

Because of all of the inconsistencies, discrepancies, omissions and erroneous statements in this EIR as detailed above it must be corrected. The fact that the Stream Restoration Alternative is recognized as potentially the most environmentally superior alternative and the likelihood that it would also be the most cost effective mandates that it must be equally addressed so it can be objectively evaluated with the Preferred Alternative in this EIR. The EIR must be revised to correct the listed problems and thoroughly address the Stream Restoration Alternative. 13-80

ALTERNATE PROPOSAL

Our club believes that the Preferred Project as described in this EIR is unworkable. It will be extremely expensive, both in the cost of construction and in the cost of maintenance and will continue to degrade the river, eventually destroying it completely as evidenced by the failures on the Lower and Downtown Guadalupe River Flood Control Projects. We believe there is a far better way. We need to restore our waterways and watersheds in accordance with the goals of the Santa Clara County and San Jose General Plans and the Public Trust Doctrine and we should begin this task as soon as possible.

13-81

We propose that a demonstration Stream Restoration Project be undertaken without delay on the two and a half mile stretch of Guadalupe Creek from just upstream of Camden Ave. to its confluence with the Guadalupe River. A crash effort should be undertaken to get such a project planned, designed, approved, permitted and started this year. The project would use the fluvial geomorphological approach, as described in the EIR's Stream Restoration Alternative. Work could be done throughout the winter, with the only breaks coming for inclement weather, as salmonid migration into this area is blocked by the Blossom Hill Dam. It is anticipated that the actual construction work could be completed in less than a year.

13-82 This project would demonstrate the superior environmental values and low cost of this alternative. It would restore an area that is extremely degraded, and one with little to no riparian corridor or shade cover. It would fix portions of the creek which are threatening the Camden Ave. Bridge and parts of Coleman Road. It would provide salmonid habitat and cool waters where they now do not exist, before areas of the Guadalupe River are impacted. A goal of the project would also be to percolate water via the natural stream bed at nearly equivalent levels as the previously employed gravel spreader dams. An EIR for this project should be relatively easy to complete as the SCVWD would have to be working on one at present to satisfy requirements for their planned mitigation for salmonid use of this area.

13-83 It is estimated that this project would cost less than $500 K and could be funded, in the most part, by grants and donations. Dave Rosgen roughly estimated construction cost for the project to be around $400 K when he briefly surveyed the area on April 8, 1997. Other innovative funding methods such as contributions by businesses, environmental, conservation and fishing groups, as well as individuals, coupled with volunteer work, could substantially reduce the costs.

13-84 The immediate restoration of this area would provide substantial benefits to the river. Erosion in the area would be eliminated, reducing siltation problems downstream. Flash runoff would be reduced by a more natural meandering creek which reduces the potentially of flooding downstream. Percolation would be provided via the natural creek bed and/or off stream ponds instead of the expensive and environmentally damaging gravel spreader dams. As soon as riparian vegetation started to grow it would provide more and more shade to the now unshaded creek reducing the high temperature water being dumped into the river. It would provide immediate added habitat for land locked native trout which inhabit the upstream areas of the creek. It would also provide potential habitat for salmonids once a bypass is constructed around the Blossom Hill Dam. And, the new riparian area would provide a home for birds and wildlife displaced from the destruction of their habitat in the downstream areas. In addition, the project would demonstrate that the Stream Restoration Alternative is the only viable and cost effective alternative for the Upper Guadalupe Flood Control Project. The project would provide only beneficial impacts, at no cost to the downstream flood control project. If this project could be undertaken and completed within a year and initial indications showed it was meeting its cost, schedule, design and implementation goals, then a follow on project could be immediately undertaken in Reaches 12 and 13 of the Upper Guadalupe Flood Control Project. 13-84

Reaches 12 and 13 are similar in nature to Guadalupe Creek. It is devoid of good riparian habitat and shade cover and a dam will have to be removed or bypassed. Plans for using the Stream Restoration Alternative for this area should have already been completed as a result of the EIR process. According to D. Rosgen's estimates, construction costs for this 1.5 mile stretch of river from the Guadalupe Creek confluence to Branham Lane would be less than $500 K. Even if this figure were doubled, it would still be less than a fifth of the cost of the $5.5 M listed for the Preferred Project and the $9.5 M listed for the Minimize Vegetation Impacts Alternative. The projected savings would be substantial. 13-85

Once the above projects are completed and are working properly, which could be a early as the winter of 1999. Reaches 10 and 11 could be tackled the following spring. The riparian habitat in these areas is also marginal but aquatic habitat is fairly good. Salmon have been using these areas to spawn at least for the past six years. The goal of the restoration alternative is to improve both the aquatic and riparian habitat in these areas which should not be difficult.

Once the upper reaches of the river are restored the most difficult reaches, 9 through 6, would be tackled. It is recognized that restoration efforts in these areas will have a heavy impact on the river channel and riparian corridor for the short term. But it is strongly felt that it will substantially benefit the river in the long run. By restoring the upper sections of the river first, salmonids will be able to use the restored upper reaches, including Guadalupe Creek, if they so desire by the time the lower reaches are disturbed for restoration and flood protection. Again, it should be emphasized that restoration efforts of the upper reaches would **not** increase the chances of flooding downstream. D. Rosgen categorically stated that proper design and restoration would decrease the potential for flooding in the restored areas and decrease flood flows thus reducing the chance of flooding and erosion downstream. 13-86

Using the above plan, in the remote likelihood if any of the restoration efforts were to fail, it would not be difficult to implement one of the other alternatives, discussed in the EIR, on the downstream reaches of the river. We feel this will not be the case. We believe the strategy 13-87

13-87 outlined above to be a winning one for all. The river will be restored in accordance with government policies and environmental goals providing local recreation opportunities for the public, wild and aquatic life will benefit, the cost of the flood prevention project will be substantially less and, therefore, it can be completed in far less time to the benefit of all citizens.

Lawrence Johmann

Lawrence M. Johmann, PE, CQE, CRE

cc: J. Cadell
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Attention: Mr. Terry Neudorf and Mr. Dennis Cheong

From: Rick Bernardi
LIFEWEB

Subject: Comments on DEIR/EIS Upper Guadalupe River Flood Control Project

Date: April 18, 1997

Total Pages including cover: 15

COMMENT LETTER 14

LIFEWEB

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April 18, 1997

Mr. Dennis Cheong
Mr. Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Subject: Draft Environmental Impact Report/Environmental Impact Statement, Upper Guadalupe River Flood Control Project, January 1997

Dear Mr. Cheong and Mr. Neudorf;

On behalf of Lifeweb, I have reviewed the *Draft Environmental Impact Report/ Environmental Impact Statement* (DEIR/EIS) for the Upper Guadalupe River Flood Control Project (hereinafter referred to as "the project"). I would like to congratulate the Santa Clara Valley Water District on the preparation of this DEIR/EIS. We believe this document to be a significant improvement over the July 1985 *Final Guadalupe River Interim Feasibility Report and Environmental Impact Statement, Guadalupe River and Adjacent Streams Investigation* which the U.S. Army Corps of Engineers prepared for the flood control project in downtown San Jose.

However, there are several areas which we feel the DEIR/EIS inadequately addresses. Since this is a draft document, circulated for public comment before revision into a Final EIR/EIS, Lifeweb wishes to submit the following questions and comments for your response and inclusion in the *Final Environmental Impact Report/Environmental Impact Statement* (FEIR/EIS); thank you for the opportunity to comment. For your ease in responding, I have organized my comments and questions by DEIR/EIS chapter headings.

Chapter 2.3

Purpose and Need for Project

Despite the title of this section, we feel this section is lacking in some important information which would help establish whether or not there is a need for the project. Some of this information is available in Tables 4.2-2 and 4.2-3, but should be incorporated into this chapter. We agree that the river has flooded several times between 1779 and 1995. We do have questions regarding your analysis, however. Specifically, we have the following questions: 14-1

Question 1: You claim that "River flooding has caused bank erosion, debris accumulation, and sediment deposition..." Are you referring to sediment deposition within the river channel, or on the floodplain? 14-2

Question 2: Our understanding of fluvial geomorphology is that high rates of both bank erosion and sediment deposition (within the river channel) are the result of instability due to channelization. In light of this, can you please explain more clearly your claim that these impacts are the result of river flooding, rather than the result of geomorphological disequilibrium resulting from channelization? 14-3

Question 3: You have claimed that "Guadalupe River flooding has inundated as much as 5,200 acres during the most severe floods." In the same chapter section, you claim that a one percent flood would flood approximately 2,200 acres. Since the Project will provide protection for "flows up to the one percent flow," only 42% of historically flooded areas will be protected by this project. Can you explain the rationale for not protecting all 5,200 acres? 14-4

Question 4: What volume of water, in cubic feet per second (cfs) is considered a 1% flood on the Guadalupe River? 14-5

Question 5: What would be the mean depth of a 1% flood along the Guadalupe River, given the *No Project Alternative*? 14-6

Question 6: How does that volume and depth of water compare with the volume and depth of water in the disastrous floods that other U.S. regions have experienced during the winter of 1996-1997? 14-7

Question 7: You have noted that the river has flooded several times since 1779; have any of those floods been 1% floods? 14-8

Question 8: If there have been any 1% floods on the Guadalupe River, what was their mean depth and volume in cfs? 14-9

Question 9: You note that even with a flood control project, "Local drainage problems would continue to affect areas near the airport in the vicinity of Reach A." Please explain this statement. 14-10

Question 10: Are the lands which have been inundated in past floods within the 14-11

14-11 Guadalupe River's floodplain?

Question 11: This chapter does not discuss the costs of the project, or how either the Santa Clara Valley Water District (SCVWD) or the U.S. Army Corps of Engineers (USACE) propose to fund the project. However, you do claim that damages from a 1% flood would be approximately $280 million. In the *Guadalupe River Watershed Planning Study Engineer's Report* (hereinafter referred to as the "*Engineers Report*"), page 3-216, a "total first cost" of $114 million is estimated for the project, while Table 3.1 in Chapter 3 of the DEIR/EIS gives a total cost of $113.5 million. The correct figure should be incorporated into the discussion in chapter section 2.3 of the DEIR/EIS.

14-12 The *Engineer's Report* also states that the project "would be funded by existing revenues generated in the Central Flood Control Zone," including the SCVWD allocation of the "1 percent property tax and flood control benefit assessments." This information should also be incorporated into chapter 2.3.

Neither the *Engineer's Report* nor the DEIR/EIS discuss the source of federal funding for the project, even though chapter 2.1 of the DEIR/EIS notes that USACE is preparing a study, at the request of SCVWD, the purpose of which is "to determine the extent that the Corps will fund the District's Preferred Project of this EIR/EIS." What portion of the estimated $114 million cost of the project does SCVWD expect to be funded by federal tax dollars?

14-13 **Question 12:** The *Engineer's Report* (Table 3.25) notes that the construction shedule, is expected to begin in 1998, and end in 2023. On page 3-216 of the *Engineer's Report*, you state that construction could be delayed up to 20 years (that is, until the year 2023) if benefit assessment revenues are not continued beyond the year 2000. We assume this to mean that funding for this project will run out in the year 2000. Why is the SCVWD proposing to start construction on a project for which there is no funding to complete the project before 25 years?

Question 13: This chapter section is supposed to explain both the purpose and the need for the project. While we agree with your analysis that flooding has occurred periodically, and that land (presumably within the floodplain) has been inundated, you have failed to adequately explain the need for the project.

14-14 Specifically, our understanding of economics leads us to conclude that there are two options in response to the problem of inundated floodplains: one option is to allow market forces to prevail, in which case people will either choose not to locate within a floodplain, or they will choose to locate within a floodplain only if A) they can afford to bear the cost of floodproofing, or B) they can afford to bear the cost of flood insurance and flood damages, or C) the opportunity cost of locating within a floodplain is low (in which case, the person would perceive the probability of damages from flooding to be relatively low, and outweighed by the potential savings from locating on floodplain land, which, in free market conditions, would be less expensive than land outside of the floodplain). The second option is for the public to provide flood protection for those who choose to locate within a floodplain. This chapter implicitly assumes that the public should provide flood control protection.

Historically, government has mitigated free market inefficiencies by providing services to society whose benefits are social or collective, and which cannot be profitably provided by the free market. These public or social benefits include military, police, and fire protection, transportation infrastructure, public education, and parks; because they are collective benefits they are enjoyed by all members of society. Generally, government services have been provided to benefit society at large. In some cases, social benefits have been provided for smaller segments of society, such as dependent children of the poor, the elderly, and the infirm with the understanding that some members of society, through no fault of their own, need public assistance to survive. Examples of these programs include the recently dismantled AFDC, Social Security, and Medicare.

14-14

However, this project appears to benefit a small segment of society by subsidizing the cost of building and locating within a floodplain, and spreading that cost to all of society. At your public meeting of April 3, 1997, one homeowner argued that the project should proceed with all haste, so that he could stop paying for flood insurance. Please explain why the taxpayers should fund a flood control project to subsidize those who choose to build or locate their homes and businesses within a floodplain, rather than allowing market forces to prevail.

Chapter 2.5
Regulatory and Permit Requirements

Question: Several agencies which this project will involve are listed in Table 2.1. However, we notice the absence of the National Marine Fisheries Service (NMFS). Given their ongoing listing process for several species of anadromous salmonids, we believe that NMFS must be an integral part of the approval process for the project. Why has NMFS been excluded from the regulatory and approval process for the project? 14-15

Chapter 3.1
Screening of Potential Alternatives

Comment: This section, along with Appendix D, discusses alternatives to the preferred project. We feel that the treatment of alternatives, specifically the *Stream Restoration Alternative*, has been given inadequate consideration. The entire DEIR/EIS is heavily weighted towards the *Preferred Project*, with discussions of the *Minimize Vegetation Impacts Alternative* and the *No Project Alternative* included in each chapter. Several other alternatives were proposed in the July 1985 *Final Guadalupe River Interim Feasibility Report and Environmental Impact Statement, Guadalupe River and Adjacent Streams Investigation*, but were eliminated from further consideration in both that EIR/EIS and the current EIR/EIS. The *Stream Restoration Alternative*, a new proposal, has also been eliminated from further consideration in the DEIR/EIS. In our opinion, the elimination of the *Stream Restoration Alternative* was both premature and inappropriate. 14-16

As you note, the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) require that a range of reasonable alternatives, including a *No*

14-16 *Project Alternative*, be considered in an EIR/EIS. While the SCVWD appears to have complied with the letter of the law regarding the *No Project Alternative*, we believe that it is implicit in the DEIR/EIS that this alternative is included only because CEQA and NEPA require it's inclusion. In other words, this alternative has been included, but has not been seriously considered as an alternative for the *Preferred Project*, because it does not meet the goal of attaining the objectives of the project, which is to control flooding on the Guadalupe River. Since the *No project Alternative* does not attain the objectives of the project, the DEIR/EIS is, in effect, a comparison between two plans which do meet the goal of obtaining the objectives of the project: the *Preferred Project*, and the *Minimize Vegetation Impacts Alternative*. This presents two problems.

14-17 First, by admission of the SCVWD at the April 3, 1997 public hearing, the bulk of the DEIR/EIS is heavily weighted towards the *Preferred Project*, with the *Minimize Vegetation Impacts Alternative* receiving significantly less consideration. The problem with this approach is that it does not provide the SCVWD Board of Directors with the information they need to make a decision. In effect, staff of the SCVWD has made a decision, and is leading the Board of Directors to the same conclusion, by weighting the DEIR/EIS so heavily in favor of the *Preferred Project*. The DEIS/EIR is biased by the sheer volume of discussion devoted to one option, the *Preferred Project*. Without an unbiased discussion of a proposed flood control project, the independent judgement of the Board of Directors is compromised, and they are relegated to the role of rubber-stamping staff decisions. We believe this violates the intent of CEQA and NEPA.

14-18 Secondly, the intent of CEQA and NEPA has been further compromised by the DEIR/EIS, since, in effect, only two projects are considered. The *Preferred Project* and one alternative can hardly be construed as a "range of alternatives." We understand that within the potential range of project alternatives, some will be eliminated from further consideration because they are infeasible. We do not consider this to be problematic. However, we seriously disagree with your elimination of all but one alternative from further consideration. In particular, we urge you to include the *Stream Restoration Alternative* in the range of alternatives discussed in the EIR/EIS. We consider this alternative to be both feasible, and if given adequate comparison to the *Preferred Project* and the *Minimize Vegetation Impacts Alternative*, to be preferable to either of those options. We believe that inclusion of the *Stream Restoration Alternative* would adequately satisfy your legal obligation to discuss a "range of alternatives."

14-19 Finally, we disagree with your reasoning for rejecting the *Stream Restoration Alternative* from further consideration. It is unclear to us exactly what the short-term impacts on vegetation would be (this type of information is, after all, the reason for drafting EIR's), but assuming your claim of "substantial short-term impacts on vegetation" to be correct, we believe that the short-term impacts to vegetation would be significantly outweighed by the long-term benefits to the ecosystem. In regards to your concern that mitigation of short-term impacts would amount to "double mitigation," we have four comments.

14-20 First, in a significant sense, the benefits of the *Stream Restoration Alternative* mitigate the short-term impacts to vegetation, over the long-term. Secondly, we do not believe that your desire to avoid any mitigation requirements for the short-term impacts is sufficient justification for rejecting the *Stream Restoration Alternative*. Third, we dispute your implication that any required mitigtion of short-term impacts (double-mitigation, as you call it) is unjust. The SCVWD (as a successor District) has been conducting groundwater conservation activities since 1929 or earlier, and flood control activities since 1952. A significant amount of riparian and wetland habitat has been destroyed by the SCVWD without any mitigation whatsoever. We ten to view any extra mitigation requirements on the SCVWD as just compensation for past damages. Fourth, we do not believe that mitigation of short-term impacts to vegetation must necessarily be borne by the SCVWD alone. Many community organizations, including homeowners groups, environmental organizations, and the Guadalupe-Coyote Resource Conservation District have expressed continuing interest in restoring riparian habitat. Many individuals in our community, including members of Lifeweb, Friends of the Guadalupe, the Guadalupe-Coyote Resource Conservation District, and the San Jose Conservation Corps, have received professional riparian restoration training, and are extremely interested in organizing riparian restoration projects. In addition, there is regional, state, and national support, including funding, for such projects. What you refer to as the burden of "double mitigation" is in fact a wonderful opportunity for community cooperation and participation in the restoration of our river. 14-20

In regards to your concern about the requirements of the Clean Water Act Section 404 (b)(1) guidelines, we have three comments. First, if the guidlines were to be interpreted narrowly, it appears that your selection of the *Preferred Project* does not meet those guidelines, since it is not the less environmentally damaging practicable alternative. Instead, with a narrow interpretation of the guidlines, you would need to select the *Minimize Vegetation Impacts Alternative* (we base our analysis upon your presentation of the requirements of the Clean Water Act Section 404 (b)(1) guidelines). Secondly, We believe that, over the long-term, the *Stream Restoration Alternative* is the less environmentally damaging practible alternative, since it proposes to significantly restore the health of the stream. Third, we believe that there would be significant community support for the SCVWD during the regulatory process if the *Stream Restoration Alternative* were selected. 14-21

We also believe that your concerns about the high costs of the *Stream Restoration Alternative* are unfounded, for two reasons. First, we believe that your estimates of the costs for the *Preferred Project* are grossly underestimated, since your estimates do not include the high annual costs of annual maintenance which will be incurred over the 100 year life of the project. We believe that if the actual cost of the *Preferred Project* (construction and maintenance costs over the life of the project) were put forward, it would be the most expensive alternative. Secondly, if the cost-benefit ratios of the *Preferred Project*, the *Minimize Vegetation Impacts Alternative*, and the *Stream Restoration Alternative* are compared, the costs of both alternatives are within reason, since both provide a cost-benefit ratio of greater than 1:1. Specifically, the *Preferred Project* cost-benefit ratio (excluding maintenance costs) is 1:2.47, the *Minimize Vegetation Impacts Alternative* cost-benefit ratio is 1:1.75, and the *Stream Restoration Alternative* cost-benefit ratio is 1:1.47. We believe that with a realistic estimate of the costs of the *Preferred Project*, the comparison of cost-benefit ratios between the *Preferred Project* and the *Stream Restoration Alternative* would cast the *Stream Restoration Alternative* in a more favorable light than the *Preferred Project*. 14-22

Furthermore, in our comments on chapter 2.3 (above), we noted that, generally, 14-23

14-23 government provides public benefits for the enjoyment of all members of society, while this project proposes to provide a benefit for the enjoyment of a few members of society, to be paid for by all taxpayers. We believe that the *Preferred Project* does not provide sufficient benefits to all members of society to justify it's expense; the benefit provided is to a relatively small segment of society, and amounts to a public subsidy of the costs incurred by building or locating within a floodplain. However, we believe that the public benefits of the *Stream Restoration Alternative* (a flood control project which actually restores the riparian ecosystem) are of sufficient significance as to justify the expenditure of public funds on the project; all members of society benefit from the *Stream Restoration Alternative*. The benefit of a restored ecosystem transforms what was a subsidy into a true public benefit.

14-24 As you may now appreciate, we have serious concerns about your rejection of the *Stream Restoration Alternative* from further consideration. We urge you to include the *Stream Restoration Alternative* within the range of alternatives considered in the DEIR/EIS, and to direct substantial attention to discussion of this alternative. We would appreciate your substantive response to our comments in this section.

Chapter 3.3
Preferred Project

14-25 **Question:** SCVWD proposes (page 3-42) to limit construction activities to a low precipitation period lasting from April 15 to October 15, or for certain in-channel work, from May 15 to October 15. At what date does SCVWD expect juvenile anadromous salmonids to complete their migration out of the river?

14-26 **Question:** Does the SCVWD expect any salmonids to remain in the river during the construction period?

14-27 **Question:** At what date does the SCVWD expect adult anadromous salmonids to return to the construction area?

14-28 **Question:** What are the SCVWD's plans in the contingency that salmonids are present in the river during the construction period?

14-29 **Question:** The SCVWD proposes to to use herbicides as part of it's maintenance program (page 3-45). What herbicides will be used?

14-30 **Question:** What carcinogenic effects do these herbicides have on humans and animals?

14-31 **Question:** What mutagenic effects do these herbicides have on humans and animals?

14-32 **Question:** What effects do these herbicides have on the pituitary glands of humans and animals?

14-33 **Question:** What effects do these herbicides have on the internal organs of humans and animals? 14-33

Question: What other toxic effects do these herbicides have on humans and animals? 14-34

Question: What have long-term studies shown about the persistence of these herbicide within the stream benthos? 14-35

Question: SCVWD proposes to construct maintenance roads and ramps (page 3-45) within the riparian corridor. These roads and ramps will result in the loss of riparian vegetation. Would these roads be required with the *Stream Restoration Alternative*? 14-36

Question: What sorts of maintenance will these roads and ramps facilitate? 14-37

Question: What is the estimated cost of the maintenance program for the *Preferred Project*, over the 100 year life of the project? 14-38

Question: SCVWD proposes to establish a mitigation bank for erosion repair projects. Would the *Stream Restoration Alternative* require a mitigation bank of similar size? 14-39

Question: Where will the proposed mitigation bank be located? 14-40

Question: On page 3-49, you note that the SCVWD has entered into a settlement agreement "as a result of a dry Guadalupe River..." We believe that this "dry Guadalupe River" was the result of SCVWD actions in its management of the river, yet the DEIR/EIS description of the event leaves the impression that the river was somehow dry "naturally." Please explain how the river came to be dry, and what led to the settlement agreement. 14-41

Question: We note that during construction on Highway 237, the California Department of Fish and Game (DFG) specified a design for fish passage, and that the passage which was constructed (by a CalTrans contractor) did not conform to DFG specifications. This was not discovered until after the fish passage had been constructed and the river de-watered. What plans do you have to ensure that the step-pool ladder proposed for the 15-foot drop structure will conform to DFG specifications? 14-42

Chapter 4.2
Surface and Groundwater Hydrology

Question: On page 4.2-4, the flood of January 9th, 1995 is described as flooding Highway 87. This section of the highway, parallel and adjacent to the river, is constructed below river level. Please explain the historical circumstances surrounding construction of the highway below river level. 14-43

Comment: On page 4.2-6, you discuss the probability of the 1% flood, describing the risk as cumulative. We believe your analysis of probability is logically flawed in this section. Specifically, the probability of a 1% flood occurring in any given year is, by definition, 1%. The 14-44 probability in an artificial starting point "year 1" is 1%, and the probability in "year 501" is still 1%, even if no 1% flood has ever occurred. Another way of saying 1% is 1/100, or 1 chance in 100. If no flood occurs in "year 1," the probability for "year 2" does not increase to 2%, or 2 in 100; rather, the probability of a flood occurring remains at 1%. Similarly, in "year 3" the probability is 1%, as it is in "year 4," "year 5," and so on. To understand the probability involved, it is useful to construct a model.

Think of a special deck of cards, consisting of exactly 100 cards. Within this deck of cards, there is exactly one joker, the "joker of floods." If the cards are shuffled so that their order is not known, and then a card is drawn from the deck, there is a 1 in 100 chance that the joker of floods will be selected. Let's suppose that the card is not the joker, and that it is replaced within the deck, and the deck is reshuffled. The probability that the next card drawn will be the joker is 1%, or 1 in 100.

However, suppose that the first card is not replaced, but is thrown into a discard pile instead. Now, the probability that the second card drawn will be the joker is 1 in 99. If the second card is not the joker, and is discarded, the probability that the third card drawn will be the joker is 1 in 98, and so on. Under no circumstances does the probability of drawing the joker progress arithmetically (1 in 100 on the first draw, 2 in 100 on the second draw, and so on). The probability of drawing the joker on the 30th draw, under no circumstances, "approaches 30 percent." Rather, the probability of drawing the joker on the 30th draw, when all previous draws have been discarded, would be 1 in 71.

14-44

Thus, if each card is replaced within the pile of cards after each draw, the probability of drawing the joker on the next draw will always remain 1 in 100, or 1%. If each card is discarded after it is drawn, the probability of drawing the joker increases with each draw, until, if the joker has not been drawn before the 100th draw, the probability is 1 in 1, or 100% on the 100th draw.

To return to the discussion of cumulative risk, the reason that the probability of flooding remains 1%, regardless of whether a flood has ocurred or not, is that time is infinite. It is like the deck of cards in which the cards are continuously returned to the deck after they are drawn. Like the supply of cards, the supply of years does not decrease as each year is "drawn." There is always a point 100 years in the future, or 10,000 years in the future, and thus the probability always remains 1%. Even when considering the life of a 30 year mortgage, the risk remains 1%, regardless of the year, because the supply of years beyond the 30 year life of the mortgage does not decrease, but remains infinite. Because time is infinite, the risk cannot be cumulative.

Thus, we contend that your logic regarding probability is flawed. We believe that this flaw has serious implications, because it leads people to mistakenly believe that their risk from a 1% flood increases over time. This mistaken belief can unnecessarily frighten people, and influence them to accept flood control projects which they might otherwise view with more skepticism. We would appreciate your substantive response to our comments in this section.

14-45 **Question:** On page 4.2-6, you discuss the "one percent flood" and the "design flood." The one percent design flood is the capacity needed under existing watershed conditions. On page 6-1, you state that development in the floodplain is expected to continue, with or without the project. presumably, development withinthe watershed will also continue. What effect will this presumed continued development have on the capacity of the one percent design flood? 14-45

Question: You note that the one percent design flood is the standard the SCVWD uses, and is also the standard used by FEMA for its flood insurance program. Please esplain what the FEMA flood insurance program is. 14-46

Question: Please explain why SCVWD uses the same standard as FEMA. 14-47

Question: In the context of design standards, please explain why public funds should be used to subsidize the costs incurred by persons who build and locate on the floodplain. 14-48

Chapter 4.3

Water Quality

On page 4.3-5, you discuss "less-than-significant impacts," including the increased use of herbicides closer to the river. We find the discussion of herbicide use to be inadequate, since EPA-approval of any given chemical compound is not evidence of its safety. We feel this section should more thoroughly address the impacts of herbicide use. The questions we asked in section 3.3 should also be addressed here. The questions are as follows. 14-49

Question: The SCVWD proposes to to use herbicides as part of it's maintenance program (page 4.3-5). What herbicides will be used? 14-50

Question: What carcinogenic effects do these herbicides have on humans and animals? 14-51

Question: What mutagenic effects do these herbicides have on humans and animals? 14-52

Question: What effects do these herbicides have on the pituitary glands of humans and animals? 14-53

Question: What effects do these herbicides have on the internal organs of humans and animals? 14-54

Question: What other toxic effects do these herbicides have on humans and animals? 14-55

Question: What have long-term studies shown about the persistence of these herbicide within the stream benthos? 14-56

Chapter 4.5

Land Use and General Plan Consideration

Question: Relevant plans and policies of local government are discussed on page 4.5-6. Why was the San Jose Riparian Corridor Policy excluded from discussion? 14-57

14-58 **Comment:** We believe that a discussion of the San Jose Riparian Corridor Policy must be included in this section.

Chapter 4.6
Socioeconomics

14-59 **Question:** You state on page 4.6-3 that "operation of the flood control project would not generate any permanent jobs at the Santa Clara Valley Water District." Would operation of the project generate any temporary jobs at SCVWD?

14-60 **Question:** Would operation of the project ensure the continuation of any present jobs at the SCVWD?

14-61 **Question:** On page 4.6-6, you state that "no impacts are anticipated if the No Project Alternative were implemented." What would be the contribution to the Gross Domestic Product (GDP) if a 1% flood occurs and the *No Project Alternative* is implemented?

14-62 **Question:** Are the $280 million in damages incurred by a 1% flood a loss or a gain to the local economy?

Chapter 4.11
Public Safety

14-63 **Question:** How does the erection of fences and barricades to limit public access impact the public use of the proposed trail system?

14-64 **Question:** How does the erection of fences and barricades to limit public access impact the public use of the navigable waters?

Chapter 4.12
Vegetation

14-65 **Question:** What method was used to conduct the tree inventory (e.g, visual sighting)?

Chapter 4.13
Wildlife

14-66 **Question:** I have conducted wildlife surveys along both Ross and Canoas Creeks. Canoas Creek, in particular, is heavily utilised by wildlife, especially by mallards. Phyla and classes from a broad range of animals are reprsented here. Why did you assume that the lack of riparian habitat meant that wildlife surveys should not be conducted on Ross and Canoas Creeks?

Question: You note that no *Rana aurora draytoni* (California red-legged frogs), *Rana boylei* (Foothill yellow-legged frogs), or *Clemmys marmorata pallida* (Southwestern pond turtle) were observed. Would the long-term results of the *Stream Restoration Alternative* be likely to re-establish habitat for these species? 14-67

Question: Would the long-term results of the *Stream Restoration Alternative* be likely to re-establish habitat for the other special status wildlife species which were not present? 14-68

Chapter 4.14

Fisheries

Question: In the July 1985 *Final Guadalupe River Interim Feasibility Report and Environmental Impact Statement, Guadalupe River and Adjacent Streams Investigation*, USACE reported that "Although anadromous fish once existed in the Guadalupe River, few if any are now able to return to historic spawning areas..." Yet, you state that anadromous fish redds were discovered one year later, in 1986. The present DEIR/EIS does not discuss whether *Oncorhyncus kisutch* (Coho salmon) currently use the river; please discuss whether or not you can state with certainty that Coho salmon are not now returning to spawn in the Guadalupe River. 14-69

Question: Are there any other fish species (besides steelhead) which are listed or proposed for listing, which may be present in the Guadalupe River? 14-70

Question: On page 4.14-12, you mention that water temperatures in summer often exceed 70 degrees fahrenheit. Is this in shaded areas, or in areas where vegetation has been removed? 14-71

Question: On page 4.14-5, you discuss Snyder's research in 1895 on native fishes. This research was conducted during a year which followed a drought. In fact, you note that Snyder said that Coyote Creek was the only stream which flowed into the bay. What effect would the droght conditions prevalent at the time of Snyder's study have upon the fish populations he observed? 14-72

Question: We are aware that hatchery reared *Oncorhyncus tshawytscha* (Chinook salmon) which were released in the San Francisco Estuary have not necessarily returned to streams as intended by CDFG. The chinook returning to the Guadalupe are characterized in the DEIR/EIS as being "strays" from the CDFG hatcheries. Can you comment on the importance of "straying" in breeding dispersal? 14-73

Question: Can you comment on the importance of "straying" in range expansion, especially for species whose historic range may have been reduced? 14-74

Question: Can you comment on the importance of "straying" in minimizing the impacts of stochastic events, especially for species which are in decline? 14-75

4-76 **Question:** The DEIR/EIS (page 4.14-13) states that 21% of the sampled chinook salmon "could not be identified with any known wild or hatchery population sampled to date in the Central Valley." What significance would a genetically unique population have in the long-term survival of the species?

14-77 **Question:** What would be the legal significance of a genetically unique "remnant of an undocumented population [of chinook salmon] indigenous to the Guadalupe River?"

14-78 **Question:** The DEIR/EIS (page 4.14-13) states that "DFG has stated that their focus, with respect to fisheries management objectives in the Guadalupe and Coyote River drainages, is the perpetuation and restoration of endemic fish populations, including steelhead trout populations, and not hatchery strain chinook salmon...Furthermore, DFG does not place any 'special species' designation on Guadalupe River chinook salmon..." Given that a genetically unique "remnant of an undocumented population indigenous to the Guadalupe River" may be represented in the chinook salmon run, would DFG consider that population to be an endemic fish population which must be perpetuated and restored?

14-79 **Question:** What is the position of NMFS in regards to the chinook and steelhead in the Guadalupe River?

14-80 **Question:** What is the position of U.S. Fish & Wildlife Service in regards to the chinook and steelhead in the Guadalupe River?

14-81 **Question:** This chapter discusses removing the barriers to fish passage as a mitigation for the impacts of the project. We question the reasoning behind this. Specifically, we undersamd that SCVWD is in violation of fish and game code by maintaining barriers on waterways without providing for fish passage. SCVWD has an existing legal duty to provide fish passage, whether the project is constructed or not. Please discuss why you are counting fulfillment of an already existing legal duty as mitigation for project impacts.

Conclusion

14-82 Lifeweb has serious questions about the appropriateness of providing a public subsidy to mitigate floodplain conditions for those who choose to locate there. We believe that, in general, the risk and impacts of flooding on the Guadalupe River are overstated. Yes, flooding has occurred, but we do not believe that the flooding problem on the Guadalupe is as severe as in other areas of the country. We believe that a public subsidy can become a public benefit only when benefits to the general public are achieved. Elimination of flooding does not benefit all members of the public. Eliminating flooding and restoring the riparian ecosystem does benefit everyone. We urge that the EIR/EIS be rewritten to include the *Stream Restoration Alternative*, and that this alternative should be identified as the Preferred Project.

14-83 We are also concerned about the deleterious impacts of herbicide use, particularly those which contain glyphosate as the acttive ingredient. We are concerned as well, about project impacts upon the salmonids. We believe that the project proposes to engage in construction while salmonids are in the river channel. We would be opposed to any construction while salmonids are present, and believe that the DEIR/EIS should explicitly state that construction will not occur while salmonids are present. 14-83

Finally, we note that the downtown flood control project presently under construction is experiencing substantial failure of the fisheries mitigations due to heavy sedimentation. We believe that the natural hydrology of the stream should be restored to eliminate the ongoing problem of sedimentation. In addition, salmonid habitat must be available from the start of construction. this means that fish passage must occur before construction of the project. It also means that areas upstream will need to be revegetated before construction begins, to allow for vegetation to grow in. Mitigation for fisheries impacts must occur before construction begins. 14-84

As we noted in our opening statement, this DEIR/EIS represents a significant improvement over the FEIR for the downtown project. However, there is substantial room for improvement. With the proper design, we can have a project that provides effective flood control for the City of San Jose, while vastly improving the habitat for the wildlife species who use this valuable riparian corridor. If we all work together, we can have a project we can all be proud of. We are looking forward to substantial changes in the FEIR for this project. 14-85

Sincerely,

Rick Bernardi

cc. Robert F. Smith
Regulatory Branch
U.S. Army Corps of Engineers

James R. Bybee
National Marine Fisheries Service

Steve Shoenburg
U. S. Fish & Wildlife Service

Margaret Roper
Calif. Dept. Fish & Game

Tom Mumley
Regional Water Quality Control Board

Larry Johmann
Western Waters Canoe Club

Mike Silveria
Trout Unlimited

Roger Castillo
Silichip Chinook

Fax Cover Sheet

From: Rick Bernardi
7500 Tierra Sombra Ct.
San Jose, CA 95120

(408) 997-6067
(408) 268-9401 Fax

To: Terry Neudorf

Date: April 21, 1997

Number of pages following: Two (2)

COMMENT LETTER 14

LIFEWEB
7500 Tierra Sombra Ct.
San Jose, CA 95120

Contact: Rick Bernardi
(408) 997-6067

April 21, 1997

Mr. Dennis Cheong
Mr. Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Subject: Draft Environmental Impact Report/Environmental Impact Statement, Upper Guadalupe River Flood Control Project, January 1997

Dear Mr. Cheong and Mr. Neudorf;

On behalf of Lifeweb, I wish to submit this addendum to our comments on the DEI/EIS, which were submitted to you on April 18, 1997, and want to thank you for the opportunity to submit this addendum. As I explained to Mr Neudorf in our telephone conversation today, my attempts to explain the cost of flood damages (using the DEIR/EIS as a reference) to another party over the weekend became mired in confusion. It became apparent to me that this section of the DEIR/EIS raises more questions than it answers, and should be clarified for the FEIR/EIS.

14-86 On page 3-54, you state that the "Estimated cost of damage in the event of a one percent flood would be $280 million. Flood damages are expected to be an average of $20.6 million per year...The present worth cost of flood damage is approximately $280 million and includes annual flood damage, erosion repair, emergency maintenance, flood insurance, and flood proofing of new development."

14-87 **Question:** What is the cost breakdown for the $280 million present worth cost of flood damage? Please provide a breakdown that describes the cost for annual flood damage, erosion repair, emergency maintenance, flood insurance, and flood proofing of new development, all of which should total $280 million.

14-88 **Question:** How is the figure of $20.6 million (annual flood damages) calculated? If this is an average, please describe the total cost and period of time over which it is averaged. 14-88

Question: This discussion uses a document titled *Santa Clara Valley Water District 1997* as a reference. However, this document is not included in Chapter 11. Is this document located elsewhere in the DEIR/EIS, or will it be included in thje FEIR/EIS? 14-89

Thank you again for the opportunity to comment.

Sincerely,

Rick Bernardi

cc. Robert F. Smith
Regulatory Branch
U.S. Army Corps of Engineers

James R. Bybee
National Marine Fisheries Service

Steve Shoenburg
U. S. Fish & Wildlife Service

Margaret Roper
Calif. Dept. Fish & Game

Tom Mumley
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Mike Silveria
Trout Unlimited

Roger Castillo
Silichip Chinook

4/17 cc: L Keller [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

4/15/97

COMMENT LETTER 15

Santa Clara Valley Water District
(Expanded Information Card)

I would like to make the following statements/Requests for answers:

I believe that the "park" as proposed between Branham Lane and Capitol Exp will cause major environmental, social and aesthetic degredation to our community. While the proposed plan may serve the needs regarding flood control, it does not seem to be very condusive to future development as a park that anyone would want to spend any time at. Therefore, I urge that you think past the proposed features (that I understand from one of your engineers are the result of a money decision) and think of the feature that, in the long run, may prove to be more cost effective in bringing the project to a finish as a park. With this in mind, does the city of San Jo share in the park portion of the expense? Perhaps the added cost could be picked up by them. 15-1

Changes to the proposed plan that I would like to have addressed/studied a

1) Widening of the creek on both sides so that the cut in to land adjacent to the residences does NOT have to happen 5Ft from fence lines. WHY? Because...many homes have pools close to fence lines. My own pool in some spots seems to be not much more that 5-6 ft from the fence. Doesn't this concern you from a stability standpoint? You can be sure that I would sue you if my pool cracked or showed stress. Another reason: If you cut 5ft from fence lines you will be removing ALL the trees that line those fences. In my area, you would be removing 6-10 trees, some flowering, a grand old walnut etc. We must look past the beginning to a beautiful finished produ 15-2

2) If both sides simply are too expensive to widen, can you consider widen the expressway side, while both deepening the creek bed itself and possibl adding (I think its called) Creek Wall...the Lincoln Log idea? Please see sketch. A severe, very structural wall would seem correct next to the expressway, plus the strength would be on the side of the creek that has t strongest bends to take the water's force. With the structural changes on the expressway side, the natural side would be a) on the fence side relating to the vegetation that residents could(most certainly would,if allowed) to augment to your park planting and b) would look nice from the expressway. Have you ever walked the path in Capitola by Soquel Creek? Mar of the residents do fabulous planting...and the path is "public", enjoyed b all...very good community spirit. 15-3

I truly believe that the neighborhood on Wellington Square would GO DOWN if the flood control as proposed wuld happen. This would be a disgraceful shame, for the residents are long known for great community spirit, community involvement, superior students in our public schools (yes, check the records!)...and THIS is a big part of keeping the fabric of our societ strong...as well as neighborhood pride (I personally have been extensively quoted in the MERCURY for my views on why this is the best place to live. Please, I really do pray that this won't all have to be changed. 15-4

I have lived in Washington D.C. and have played along the canal park that stretches 35 miles from Georgetown to Great Falls, VA . I have the vision of a Creek Park and what is currently proposed AIN'T IT!

Hopeful,
Bobbie Paul
Bobbie Paul 3757 Wellington Square San Jose, CA 95136 408 265-2780

COMMENT LETTER 15

P.S.

15-5 1) Natural veg on neighborhood side would probably cut down of noise pollution as well since soft elements would face car traffic. Yes?

15-6 2) also allows for strength of natural meshing of tree roots to protect our homes, keep soil stable. Yes!

SCWD APR 16 '97 AM 8:44

COMMENT LETTER 16

Canoas Garden Neighborhood Association
P. O. Box 36146
San Jose, California 95158-6146
408-264-1718

4/18 DENNIS CHEONG
PK WHITLOCK
JT FERGUSION
RR TALLEY
JC CHEN

SCVWD1APR22'97AM 8:44

April 18, 1997

Santa Clara Valley Water District

Subject: comments re The Upper Guadalupe River Flood Control Project

We the residents of the Canoas Garden Neighborhood (a flood plain area bounded by the Guadalupe River and Canoas Creek) request the following amendments to the subject project.

1. Removal and correction of the down stream silting problem and the inclusion of an ongoing documented maintenance program.

   Those of us who live in the flood plain and have up to 35 years direct experience with the flooding that is intended to be corrected by the Project, can state from this first hand experience that the preponderance of our flooding problems (as witnessed Jan. '95) come from the lack of maintenance on the creek beds and bridge openings and further evidenced by the immediate subsidence in our neighborhood when the levee breached into Highway 97. Until there is a specifically funded ongoing program for maintenance flooding will continue to occur. 16-1

2. Correction of the backflow problem into the storm sewers in our area.

   Most of the flooding we have experienced in our neighborhood has been caused by the back flow through the storm sewers. Increasing the height of the retaining walls and levees only exacerbates this problem. We have witnessed water spouts up to a foot high coming from the manhole covers during flood periods. If this problem goes uncorrected the proposed Project will only serve to increase the flooding in our neighborhood. 16-2

We appreciate your attention to these items and inclusion of appropriate solutions in the project plan.

Sincerely,

David F Boutcher
President CGNA

CC: US Army Corps of Engineers

SIERRA CLUB • LOMA PRIETA CHAPTER
San Mateo • Santa Clara • San Benito Counties

COMMENT LETTER 17

April 18, 1997

Mr. Dennis Cheong
Mr. Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San José Ca 95118

Re: Comments on Guadalupe River Draft Environmental Impact Report/Environmental Impact Statement

Dear Mr. Cheong and Neudorf:

On behalf of the Loma Prieta Chapter, I am submitting the following comments on the Guadalupe River Draft Environmental Impact Report/Environmental Impact Statement.

Review of Additional Alternatives

We believe that the Stream Restoration Alternative was not given adequate review. Further, the justification for eliminating this alternative seems is untested. While it may be true that regulatory uncertainty exists, what efforts have been undertaken by staff and Board to get this issues adequately address now? Though there may be short term impacts to SRA and jurisdictional wetlands, the long-term benefit, both environmentally and socially, may be greater than that of the other alternatives. For this reason , the district should review this alternative in greater detail and seek the early and active involvement of the regulatory agencies in the review of this alternative. The alternative should not be eliminated until there is certainty that the regulatory agencies would not approve the approach. 17-1

We also believe that the district failed to review another potential alternative. The district should review an alternative which identifies ways to reduces runoff. Options may include removal of impervious surfaces, small on-site detention basins, replacements of parking lots with parking structures, and working with the City of San José to enact other planning regulations which would reduce or detain runoff. At a minimum, these types of activities should be included as components of the final project alternative. 17-2

Support for Minimize Vegetation Impacts Alternative

After careful review of all other alternatives listed above, and if they are found not be feasible or have greater environmental impacts, the Minimize Vegetation Impacts Alternative should be adopted for all reaches. 17-3

3921 East Bayshore Road Suite 204
Palo Alto, CA 94303
415-390-8411
FAX 415-390-8497

Length of Construction

17-4 The proposed construction spans a great deal of time. Many of the conditions identified in this document could change during this time. Further, new information about mitigation measures may become available. What process is there for revising this project as conditions change over time? Possibly, this project should be reviewed as a Program EIR/EIS with Project EIR/EIS issued for specific reaches or groupings of reaches.

Additional Mitigations

We believe the following mitigations should be included in the preferred alternative.

Vegetation

- 17-5 The success of the vegetation mitigations will be partially dependent upon adequate available water to the plants, especially during the first few years after planting. A guarantee of adequate water releases for the purposes of establish and retaining vegetation should be listed as a mitigation.
- 17-6 Attached is a pamphlet entitled Exotic Pest Plants of Greatest Ecological Concern in California as of August 1996. A program to eradicate invasive exotic weeds in the entire riparian corridor, whether the area is identified for vegetation removal or not, should be included in as a mitigation.

Fisheries

- 17-7 We applaud the proposals to remove the fish barriers and other debris with may impede fish migration. However, we believe that the district should implement removal of these immediately. Doing so would provide the opportunity for the fish to spawn the upper reaches early in the construction cycle. We believe that this would provide additional protection to the fish runs and help address the cumulative impacts to the fisheries.
- 17-8 We believe that a mitigation which guarantees a certain flows for fisheries should be added as an additional fisheries mitigation.
- 17-9 We believe that a mitigation which provides for cool water releases, including using ground water, should be included. This mitigation would be especially appropriate as an interim mitigation while SRA is being established or for those area which will have inadequate SRA.

Thank you for your attention to these details. We look forward to working with you on projects which both enhance the area's natural resources and provide flood control.

Sincerely

Julia Bott

Julia Bott
Chapter Director

4/21 RRTalley
JTFerguson
PKWhitlock
SATippets
GHFowler
LSquires

COMMENT LETTER 18

ORIGINAL DOCUMENT IN FILES

SCVWD APR21'97PM 1:43

Arcadia Development Co.

The Hamilton-Leigh Building
1500 E. Hamilton Ave. Suite 212 • Campbell (408) 371-0500
Mailing Address: Box 5368, San Jose, CA 95150

April 17, 1997

Mr. Randall R. Talley, P.E.
SANTA CLARA VALLEY WATER DISTRICT
5750 Almaden Expressway
San Jose, CA 95118-3686

RE: Draft EIR/EIS for the Upper Guadalupe River
Flood Control Project

Dear Mr. Talley:

In reviewing the subject EIR/EIS, I found no mention of Arcadia's previously stated position against the use of our property (APN 458-17-06, 17, 18 and 458-16-32) as described in the EIR/EIS or in the Engineers Report. 18-1

In 1994, representatives of Arcadia met with the district's representative, Kay Whitlock and others, to discuss our concern about the then tentative plans which identified the possible use of a portion of our property for percolation ponds. At that meeting we indicated our strong objection and requested that alternatives be explored, including locating the ponds on vacant property to the north.

Subsequent to this meeting, we filed an application with the City of San Jose for Planned Development Rezoning to develop the property in conformance with the existing General Plan which is General Commercial and High Density Residential.

In anticipation of completing the rezoning process and initiating the first phase of development of the subject property, we have terminated the agricultural use of the land. It is our intention to begin construction of the project as soon as the entitlement process is completed. 18-2

We continue to oppose the use of the subject property for Water District purposes. Please amend the EIR/EIS to reflect this opposition.

Very truly yours,

ARCADIA DEVELOPMENT CO.

Eli Reinhard, President

ER:ss

cc: Gerry de Young, Ruth & Going, Inc.

COMMENT LETTER 19

MILLER, STARR & REGALIA

A Professional Law Corporation
1331 N. California Boulevard, Fifth Floor
Walnut Creek, CA 94596

Telephone: 510/935-9400
Facsimile: 510/933-4126

FAX TRANSMISSION COVER SHEET

April 18, 1997

TO: Terry Neudorf FACSIMILE: 408-268-7687

FROM: Janine Ogando

RE: April 18, 1997 letter

Total Number of Pages *(including this page)* 3

The information in this facsimile transmittal is intended only for the use of the addressee and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering this transmittal to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

nec34547

COMMENT LETTER 19

MILLER STARR & REGALIA
A PROFESSIONAL LAW CORPORATION

1331 North California Blvd.
Fifth Floor
P.O. Box 8177
Walnut Creek, California 94596
Facsimile (510) 933-4126
Telephone (510) 935-9400

Oakland Office
Telephone (510) 465-3800

Sacramento Office
Telephone (916) 443-6700

JANINE C. OGANDO

April 18, 1997

VIA FACSIMILE
(408) 268-7687)

Terry Neudorf
Environmental Resources Management Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Re: Comments on Upper Guadalupe River Flood Control Project EIR/EIS

Dear Mr. Neudorf:

This office represents Realtec Corp., the owner of property in the vicinity of the intersection of First Street and Montegue Expressway. This property is located near the low point of the "alternate" flood flow channel between the Guadalupe River and Coyote Creek. The property is located downstream from the project area and has experienced losses from relatively minor flood events.

19-1 We have the following comments with regard to the upper Guadalupe River Flood Control Project EIR/EIS.

1. The EIR/EIS states that the hydrologic characteristics of both the existing conditions as well as the preferred project alternative are described in the Guadalupe River Planning Study Engineer's Report. It appears as if the EIR/EIS attempts to incorporate this document by reference pursuant to Section 15150 of the CEQA Guidelines. However, the incorporated document is not summarized in any fashion as is required under CEQA Guidelines Section 15150(c). There is not even the most basic description of the hydrologic effects of this

project. The EIR/EIS needs to provide a more complete discussion of the hydrologic characteristics of the River as it exists today as well as the hydrologic impacts of the proposed project or otherwise provide a summary of that information as it is presented in the Planning Study Engineer's Report. The document should then be recirculated so that the public has an opportunity to review and comment on the material. 19-1

2. The project apparently includes significant alteration of the River channel along different stretches of the River. These alterations include the construction of secondary channels as well as some bank excavation. The EIR/EIS does not discuss the potential impact to the rate of downstream sedimentation in the Guadalupe River channel that these activities may cause. If the velocity of the flow within the channel is increased upstream, will this increase the rate of sedimentation on the unimproved stretch of the River north of the project? If there is any potential for increased flood impacts north of the project, these impacts need to be fully discussed and mitigated. 19-2

We thank you for the opportunity to comment on this project.

Very truly yours,

MILLER, STARR & REGALIA

Janine C. Ogando

Janine C. Ogando

JCO:ses

4/17 TNeudorf
RKWhitlock
JTFerguson
RRTalley
KWWhitman
LSquires
JChen
VRico
TShintani

COMMENT LETTER 20

CVWD3APR17'97PM 4:19

Sequoia
MANAGEMENT CO., INC.
3880 S. Bascom Avenue, Suite 205 • San Jose • CA 95124 • (408) 559-9227 • Fax: (408) 559-9276

April 15, 1997

Mr. Terry Neudorf
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

ORIGINAL DOCUMENT IN FILES

Aesthetic
along
Almaden Rd.

Re: Upper Guadalupe River Flood Control Proj

Dear Mr. Neudorf,

I have several questions and concerns ab ct. I represent the owners of two apartment complexes located in Reach 9. Almaden 1930 Apartments and 1776. The Guadalupe River is the front door to our 1930 Apartments its re-construction, maintenance and well being are critical to us.

I attended the meeting of April 3, 1997 held in the cafeteria of the Willow Glen Educational Park my questions that evening along with some new inquires, are:

1. On page 10 of the "Public Notice" in the paragraph titled "Aesthetic Quality" it states; "The proposed project would result in reduced visual quality at 10 locations..." Would you please list those 10 locations. 20-1
2. In the meeting it was stated that a ramp and maintenance road will be constructed in Reach 9. Where will these items be? 20-2
3. What type of fence or barrier if any is proposed at the edge of the project? 20-3
4. If fencing is used will the visual impact of the fence be mitigated by the use of landscaping? 20-4
5. In Reach 9 there is an existing water pumping station. Are there plans to screen this existing structure with landscaping? 20-5

Thank you for answering these questions.

Sincerely,

Ruth Goldstein
Chief Executive Officer
RG:rp

COMMENT LETTER 21

R+C
Ruth and Going, I

Engineering
Architecture
Planning

1630 Zanker R
San Jose, CA 95
Ph: (408) 452-5
Fax: (408) 452-5

Mailing Address
P.O. Box 61160
San Jose
CA 95161-1600

April 17, 1997

Mr. Terry Neudorf
Environmental Resources Management Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

RE: Draft EIR/EIS for the Upper Guadalupe River
Flood Control Project

Dear Mr. Neudorf;

On behalf of Arcadia Development Co., we wish to comment on the subject Draft EIR/EIS.

Comment Number 1
With regard to Chapter 4, Section 4.5 Land Use and General Plan Considerations, Page 4.5-6, second paragraph, it incorrectly states that "*The central two thirds of the western side of the reach are zoned for agriculture and are in production. This area, which is actively used to grow row crops.....extends from the River to the Almaden Expressway.*"

The property (APN 458-17-06, 17, 18 and 458 -16-32) to which the above section refers has a City of San Jose General Plan designation of General Commercial on the portion of the property lying south of the future extension of Chynoweth Avenue, and a designation of High Density Residential (25-40 DU/AC) on the area north of Chynoweth. The entire property is the subject of a pending Planned Development (PD) Rezoning which anticipates the development of 350,000 square feet of Retail Commercial uses and up to 504 Residential units. 21-1

In addition, the agricultural use of the subject property was terminated in December 1996 in anticipation of the first phase of development of the site in conformance with the General Plan designation and PD Rezoning.

Comment Number 2
With regard to Chapter 4, Section 4.5 Land Use and General Plan Considerations, the analysis needs to identify that the acquisition of Lands of Arcadia on the north side of future Chynoweth would result in the reduction of anticipated housing stock by as many as 504 units. The city of San Jose's General Plan policies encourage the development of high density in-fill housing. Also, the City has recently adopted a Greenline strategy to direct new growth inward on undeveloped parcels like the Lands of Arcadia; and particularly parcels in close proximity to light rail The EIR/EIS must identify and analyze the impacts to these San Jose Policies. 21-2

Terry Neudorf
April 17, 1997
Page 2

Comment Number 3
With regard to Chapter 3, Preferred Project and Alternatives, Page 3-53, 6th paragraph, it states "*Operation of the Branham and Blossom Hill seasonal dams would be discontinued, and the in-stream percolation ponds would be replaced with off-stream ponds. The loss of in-stream percolation ponds is estimated at 14.0 acres.*"

The EIR/EIS does not provide an adequate analysis of the alternative of continuing to utilize either the existing seasonal dams or, as discussed in the Guadalupe River Watershed Planning Study Engineer's Report page 3-84, the use of inflatable dams.

21-3

The Engineer's Report does speak to the technical aspects of the use of seasonal dams. However, it indicates that the preferred project does not include their use due to non-technical issues; those being water rights issues and the process to appropriate and use the water. It further states that these issues are yet to be investigated. The EIR/EIS should analyze these issues. Without these issues being discussed in the EIR/EIS the alternatives analysis is incomplete.

21-4 In addition, the EIR/EIS alternatives analysis should identify and evaluate the cost of continuing to utilize in-stream percolation versus the cost of acquiring some 14 acres of land and constructing new off-stream ponds in Reach 12. Should the new off-stream ponds be located as shown in Figure 3.3C of the EIR/EIS, and in Sheet 17 of the Engineer's Report, the District will have to acquire the additional land necessary to construct the ponds, and ancillary facilities, as indicated on the plans. How does this cost compare to the continued use of the seasonal dams, and what is the net reduction in capital cost of the project. The Engineer's Report identifies the cost difference, in Table 3.15 on page 3-67, between a project which only raises the levees in Reach 12 and the one which is identified in the EIS/EIR as the Preferred Project. However the EIR/EIS should discuss this issue in the context of maximizing the value of the Flood Control Project proposed while minimizing the Capital expenditure. The EIR/EIS does not adequately discuss how the new off-site percolation ponds contribute to the Flood Control objectives of the proposed project?

On behalf of Arcadia Development Co., we would request that the Draft EIR/EIS be modified to reflect the comments provided above.

Sincerely,

Gerry De Young
President

cc: Arcadia Development Co.

FACSIMILE COVER PAGE

To: Terry Neudorf, SCVWD			**From:**
Time: 10:33:30		**Date:**	4/18/9
Pages (including cover): 2			

re Guadalupe River Flood Control DEIR/DEIS

Larry Ames, phone 415/424-2448

COMMENT LETTER 22

Willow Glen
Neighborhood Association

April 18, 1997

Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
fax 408 266-0271

re: Upper Guadalupe River Flood Control Project Draft Environmental Impact Report

Dear Mr. Neudorf,

The Willow Glen Neighborhood Association (WGNA) appreciates that you are proposing a flood control project for the Guadalupe River. This river has flooded a number of times in recent years, affecting many residents in Willow Glen.

22-1 Without going into specifics, in part as details of the design may change slightly over the anticipated twenty-five year implementation period, we support the concept and general design. This project will leave a profound permanent mark on the area, so it is important that it be constructed properly. We support your efforts to control the flood waters in an environmentally sensitive manner. We note that, at the various public hearings, there were few if any calls for flood control at any cost, but many comments about the riparian habitat. This is our chance here in Santa Clara Valley to enhance the environmental quality of the region, and also to create an urban openspace. The latter is especially important to the community, given the density of the surrounding areas and the deficiency in parks.

22-2 The DEIR calls for several new bridges and the replacement of a number of other bridges across the Guadalupe River. We urge you to construct those bridges so as to not preclude the eventual construction of recreational trails along the river: make the bridges high enough that they allow safe passage underneath. We also urge you to design the bridges to be wide enough to support bicycle lanes on the streets, in accordance with existing, planned, and prospective bike routes. (Also, at one hearing, a member of the public asked about a bridge a Pine Avenue: WGNA does not endorse a bridge there, and we hope that you will not pursue it.)

22-3 The Guadalupe River corridor has been identified in the County's Trail Master Plan of 1995 as an alignment for a "subregional" recreational trail, a major link in the county-wide trail system. Given the great enjoyment and heavy usage of the nearby Los Gatos Creek Trail, we would really appreciate it if you can work with the city and county to construct a multi-use recreational trail here as part of the construction process.

22-4 We understand that the SCVWD is purchasing certain properties as they become available in anticipation of this project. We hope that you will maintain them properly, so as to avoid negative impacts to the neighboring community.

We offer to assist you in communicating with the community, and to be involved as appropriate in the detailed designs as they affect the Willow Glen area.

Lawrence Lowell Ames

Lawrence Lowell Ames, President.

cc: Councilmember Frank Fiscalini, County Supervisor Blanca Alvarado.

Guad-eir.doc

P. O. Box 7706 • San Jose, CA • 95150-7706
408.294.WGNA • 408.294.9462

COMMENT LETTER 23

The Atrium

April 18, 1997

Mr. Dennis Cheong or
Mr. Terry Neudorf
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

"HAND-DELIVERED 4/18/97"

Dear Sirs:

This letter will serve as The Atrium's written response to your letter of February 18, 1997 soliciting comments re "THE UPPER GUADALUPE RIVER FLOOD CONTROL PROJECT."

We are situated in Reach 12 and would like the following questions answered:

1. As a retirement community housing 325 elderly and sometimes frail people, what impact, if any, will your project have on their present health and lifestyle here? For example some apartments have a view looking directly at the river and percolation pond bordering Blossom River Dr. Others look north toward Highway 85 over another percolation pond. Will views be adversely affected? If so, will that be permanent or temporary? What about dust and noise? What would be your estimate on the time frame of construction impact on our community? 23-1

2. When do you anticipate walking trails and associated landscaping/benches, etc., will be completed in Reach 12? 23-2

3. What other kinds of recreation will be available in this area? (Fishing/swimming/biking,etc?) 23-3

4. If bicycles are to be allowed along the trails, what safety measures will be implemented to protect walkers. 23-4

5. Will walking paths be flat and suitable for elderly people to negotiate. What accommodations will be made for the physically challenged? 23-5

6. Where will access gates for the public be located in Reach 12? May the public offer input on that decision? 23-6

7. What will access hours be and how will the area be secured overnight? (Locks/security patrol?) 23-7

8. How will the area be lighted at night? 23-8

9. Do you anticipate an increase in traffic in the Blossom River Dr./Blossom River Way Area due to recreation seekers. If so, how much of an increase and how will parking be accommodated? 23-9

1009 Blossom River Way
San Jose, CA 95123
408-267-3600

23-9 9. Do you anticipate an increase in traffic in the Blossom River Dr./Blossom River Way Area due to recreation seekers. If so, how much of an increase and how will parking be accommodated?

23-10 10. Will Reach 12 be posted to prevent overnight camping. (There is already a problem with homeless people staying under the Blossom Hill bridge on occasion.)

23-11 11. Will this project INCREASE the chances of flooding in Reach 12, due to DECREASING flooding in the downtown areas?

We appreciate this opportunity to offer our comments, and look forward to hearing your answers.

Sincerely,

Kathie Clark

Kathie Clark
Administrator

cc: U.S. Army Corps of Engineers - Bob Smith, Permit Manager
Regulatory Branch
333 Market St.
San Francisco, CA 94105-2197

COMMENT LETTER 24

Friends of the Guadalupe
"The Silicon Valley Chapter of Urban Creeks Council"
1228 Harriet Avenue Campbell, CA 95008
(408) 374-0556 Phone - (408) 378-1383 Fax

April 18, 1997

Mr. Dennis Cheong & Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Subject: Draft Environmental Impact Report/Environmental Impact Statement, Upper Guadalupe River Flood Control Project, Dated January 1997

Dear Mr. Cheong and Mr. Neudorf;

Our Chapter has reviewed the DEIR/EIS on the Upper Guadalupe River Flood Control Project dated January, 1997. Thank you for the opportunity to comment we believe this document to be a great improvement over the Final Guadalupe River and Adjacent Streams Investigation and Environmental Impact Statement, July 1985, which the U.S. Army Corps of Engineers prepared for the Flood Control Project located in downtown San Jose.

2. PURPOSE AND NEED FOR THE PROJECT

2.3

Would the Stream Restoration Alternative cause less sediment deposition in the river channel? How many times has the Guadalupe river had a 1% flood? This project will protect 42% of the floodplain, please discuss why you are only protecting 2,200 acres and not all 5,200 acres. 24-1

High rates of bank erosion and sediment deposition (within river channels) are the result of instability due to channilization. Why have you stated that bank erosion and sediment deposition are caused by flooding? Are you referring to sediment deposition on the floodplain? 24-2

What volume of water in (cfs) is considered a 1% flood on the Guadalupe River? What would the mean depth of a 1% flood along the Guadalupe River if there were no project? 24-3

How many 1% floods have there been on the Guadalupe River? What was their mean depth and volume? 24-4

How does the Santa Clara Valley Water District or the U.S.Army Corps of Engineers propose to fund the project? There is inconsistency between the DEIR/EIS and the Engineers Report as to the cost of the projet. The Engineers Report p. 3-216 reports a total cost of $114 million, 24-5

100% recycled used newspapers

24-5 while the DEIR/EIS on Table 3.1, Chapter 3 states the total cost to the $113.5 million. Which is the correct projected cost? The benefit assessment revenues will not contiune beyond the year 2000. The Engineer's Report states construction could be delayed up to 20 years if benefit assessment revenues are not continued past the year 2000. Why are you proposing to start a project that may not receive funding for before 25 years? We believe funds should be obtained for projects before the permitting process and start of construction. We believe trying to obtain permits for a proposed project 25 years into the next century without funding is speculatative.

24-6 This project will benefit a small number of people by subsidizing the cost of building and locating within a floodplain, and spreading the cost to all citizens. Please discuss the rational of why taxpayers should fund a flood control project to subsidize those who choose to locate homes and businesses within a floodplain, and close to the river.

2.5 REGULATORY AND PERMIT REQUIREMENTS

24-7 Table 2.1 of the DEIR/EIS lists the agencies that are needed to review and approve the project. The Table omitted the Rivers and Harbors Act. Section 9 and 10 of this act applies to the project area of the Guadalupe River and permits must be obtained under this act for work done in the main channel. The State Lands Commission has exclusive jurisdiction over the bed of all navigable waterways in the State and reviews all projects affecting these waterways for consistency with the Public Trust Doctrine. We feel the Public Trust Doctrine will be violated by the proposed Preferred Project. National Marine Fisheries needs to be included on the regulatory list for this project.

3. PREFERRED PROJECT AND ALTERNATIVES

3.2 ALTERNATIVES ELIMINATED FROM FURTHER STUDY

24-8 **We believe the Stream Restoration Alternative to be the superior alternative. We feel the document was weighted in favor of the Preferred Project, and did not adequately address the Stream Restoration Alternative.** Although construction impacts to wetlands and the SRA habitat are greater at first under the Stream Restoration Project, the impacts to wildlife habitat in the entire watershed would be much less with the implementation of the Stream Restoration Alternative. The environmentally preferable alternative should not be eliminated because of "regulatory uncertainty". Regulatory uncertainty exists in all project permitting situations. The Stream Restoration Alternative would comply with broad regulatory mandates, improving water quality as well as allowing new vegetation to establish over time. This new vegetation would reduce long-term impacts and the project would then follow the CEQA guideline, "reduce (impacts) over time".

24-9 The geomorphologically superior design of the Stream Restoration Alternative would not only enhance the environment, it would offer citizens a less expensive project over time. If the stream were geomorphologically designed it would carry out its sediment, greatly reducing the cost of maintenance. If extra width is needed, savings from the maintenance costs over the lifetime of the project could be used. The Stream Restoration Alternative "would create a functional physical and biological river system that allows natural processes to occur while restoring and maintaining habitat for fish and wildlife". We believe all citizens would like to have fish in their rivers and riparian corridors that support wildlife. This project will take until 2023 to complete; by that date, the value of open space in an urban area with streams that support fish and wildlife will be *extremely* important to citizens. The benefits of a restored stream and ecosystem that may be possible with the Stream Restoration Alternative could turn a subsidy for the few into a benefit for the whole. 24-9

The Downtown Flood Control Project is not working in accordance with the conditions of its permits. Downstream of Highway 101, the project is not working as designed. We do not need another flood control project that has as many problems as Contract 1 and 2 of the Downtown Flood Control Project; one that taxpayers will have to maintain for 100 years, the life of the project. This project has destroyed large amounts of wildlife habitat and riparian forest. The U.S. Army Corps of Engineers admitted that the project is not working. Please discuss the rationale for building another project that is not geomorphologically designed to carry out sediment and function as a natural stream other than "regulatory uncertainty". Could you discuss the Stream Restoration Alternative in terms of maintenance cost in comparison with the Preferred Project? Would you discuss the cost of construction for the Stream Restoration Alternative excluding extra land purchase? Would you give equal weight and analysis to the Stream Restoration Alternative for citizen review and comments? 24-10

This is the only alternative which will satisfy all of the stated policies and goals of the Santa Clara County General Plan and the City of San Jose General Plan. These plans strive to protect our waterways and riparian habitats while providing flood protection and reducing maintenance costs. This is the only alternative that will satisfy the goals of the EPA, the California Department of Fish & Game, the U.S. Fish & Wildlife Service, the National Marine Fisheries Service, the California Public Trust Doctrine and the majority of citizens. It will also satisfy the goals of the newly formed Santa Clara Basin Watershed Management Initiative Group. 24-11

The DEIR/EIS is biased by the volume of discussion devoted to one project, we believe this violates the intent of CEQA and NEPA. The Preferred Project and one other alternative cannot be considered as "a range of alternatives". 24-12

Because the project won't be complete until 2023 (*the most optimistic view*), we believe the EIR/EIS should stipulate that before start of construction, the Integrated Vegetation Mitigation Plan, the Guadalupe Fisheries Management Plan, The Vegetation Plan for Riparian and Urban Forests are complete and have received approval from the SFRWQCB, the CDFG, the USFWS, and NMFS. 24-13

FISH PASSAGE

The DEIR/EIS states the Santa Clara Valley Water District would improve fish passage by removing or modifying fish barriers, which would provide access to quality habitat in tributary streams. According to section 5901 of the California Fish & Game Code, the District is legally obligated to remove all barriers to fish passage on streams for which it is licensed to appropriate water. We feel the Santa Clara Valley Water District is currently acting in unlawful violation of that section. A number of groups have brought a complaint against the Santa Clara Valley Water 24-14

24-14 District before the State Water Resources Control Board, seeking to enforce section 5901 and require the District to remove the barriers. Please discuss how can it be appropriate for the District to claim performance of an existing legal duty as a mitigation measure for the proposed project? Mitigation Measure Cf-1 is already part of the SRA Mitigation package for the Downtown Project, (fish passage at the gabion structure on Alamitos Creek upstream of Mazzone drive). We believe this to be inappropriate.

CUMULATIVE IMPACTS ANALYSIS

24-15 We believe the Cumulative Impacts Analysis is deficient. The Downtown Guadalupe project SRA impacts were to be fully mitigated (p. 5-14). "Loss of SRA habitat from implementing the Downtown Guadalupe project will be fully mitigated". Both the DFG and USFWS have demonstrated that full mitigation is not feasible under the current SRA mitigation plan, and have informed the Corps. The DEIR/EIS's conclusion that "the cumulative impact of removing streamside vegetation is therefore considered less than significant, and no mitigation is required", is therefore unsubstantiated.

24-16 to 24-19 Has the District devised a vegetation plan that will "fully mitigate" both the SRA for the downtown project, and the Preferred Project? Will the Streamside Restoration Alternative alleviate this problem? Will downsizing the width, the length and number of maintenance roads and ramps cause less SRA loss? Would the District be willing to downsize the maintenance plan regarding width, length and number of maintenance roads to preserve vegetation? Would the District take ramps out of the plan in order to save SRA and other vegetative loss?

3.3 PREFERRED PROJECT

24-20 Will the Santa Clara Valley Water District allow the steelhead trout and chinook salmon access to spawning and rearing habitat both upstream and downstream at all times? Does the SCVWD intend to permanently remove fish barriers and provide access at projects end (2023 or later), or intend to remove them at the start of construction?

24-21 Does the SCVWD expect salmonids in the river during the construction period?

4.3 WATER QUALITY

24-22 to 24-27 What are the *active ingredients* in the herbicides that will be used for maintenance? What are the carcinogenic effects these herbicides have on humans and animals? What are the mutagenic effect these herbicides have on humans and animals? What effects do these herbicides have on the pituitary glands of humans and animals? What effect do these herbicides have on the internal organs of humans and animals? What have long-term studies shown about the persistence of these herbicides within stream benthos?

4.11 PUBLIC SAFETY

24-28 Please discuss how the erection of fences and barricades will impact the publics access to the use of the navigable waters.

5.

4.14 FISHERIES

Please comment on the importance of "straying" in breeding dispersal. Please comment on the importance of "straying" in range expansion (especially for species whose historic range has been reduced). 24-29

What is the importance of "straying" in minimizing the impacts of stochastic events for species in decline? 24-30

What would be the legal significance if there was a remnant of an undocumented population of chinook salmon in the Guadalupe River? 24-31

The Friends of the Guadalupe are opposed to the Preferred Project. Not enough analysis was given to the Stream Restoration Alternative, yet it has been discarded. The project will not be complete until 2023 at the best projections, yet the benefit assessment tax ends in 2000. Herbicides that will be needed for the Preferred Project will have deleterious impacts. Further, construction will be ongoing with salmonids in the river. We would like to see the EIR/EIS *rewritten* discussing the Stream Restoration Alternative in full detail. We believe this alternative has a possibility for improving habitat and the riparian corridor, while using less herbicides. 24-32

Sincerely,

Donna Bernardi

Donna Bernardi

cc. Robert F. Smith
U.S. Army Corps of Engineers

James Bybee
National Marine Fisheries Service

Steve Shoenburg
U.S. Fish & Wildlife Service

Margaret Roper
Dept. Fish & Game

Tom Mumley
Regional Water Quality Control Board

Larry Johmann
Western Waters Canoe Club

COMMENT LETTER 25

digital

Digital Equipment Corporation
632 East Caribbean Drive
Sunnyvale, California USA
94089-1199

fax

To Dennis Cheon

Title Eir comments

Fax 268-7687 Phone

Total pages including cover 4 Date 4-18-97

From Roger Castillo Silichip Chinook (SSRG)

Title

Fax DTN Fax

Phone 747-3920 DTN page 785-1664

Internet address

Message:

If you have any problems receiving this fax, please call

Phone DTN

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COMMENT LETTER 25

Messsrs. Dennis Cheon & Terry Neudorf
Guadalupe River Planning Study
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Subject: Draft Environmental Impact Report/Environmental Impact Statement, Upper Guadalupe River Flood Control Project, Dated January 1997

Dear Dennis & Terry

25-1 Our Group has reviewed the subject document and recognized that a lot work and effort has gone into the generation and publication of EIR and associated documents. Further review on issues that were brought out on the Preferred Project Alternative meeting on the evening of April, 3 1997. Many question have come to our attention. The plan has not addressed the removal of all dangerous debris in the channel and around its banks through out the whole project. The plans only speaks of small encroached areas that are to be cleared. Our group has documented many more areas which require clearing. Can you substantiate the reason for leaving dangerous material in the river to the citizens please.

25-2 We also note by you creating a bypass channel it will not clear the main channel. Also maintaining an in channel maintenance road would be highly destructive to the environment and would lead to an increase of in stream herbicide spraying.. Ultimately more destructive than beneficial.

25-3 Our group would like to see a cost estimate for all the maintenance being done from the most recent finish flood control phases 1 and 2 . This should include the restoring of gravel, dredging, and raising of leaves for the next 50 years.

The track record the SCVWD has shown is that 70% of its property is kept clear of growth along its rivers channels near its main head quarters at 5750 Almaden Expressway. This does not include the percolation ponds which are treated in the same manner and are a sore eye for the district. So allot of the temperature and eroding problem are being produce by its old practices, and yet it so simple to correct just by simply letting plant and trees alone it can correct this problem. 25-4

Looking further we find that no consideration was give to the Salmon, Steelhead and other wild animals that use the Hole River System. We fine that designating the animals to certain areas will not work. The facts are that the salmon have been spawning though out the hole river system not just down below gauge station 23b. We find that there's no substantial protection plan that will absolutely protect the salmon and Steelhead from high temperatures up stream. 25-5

In addition to all data gathering on the salmon and other wild animals in 1992 through 1997, the group has been observing and monitoring the flood control phases 1 and 2 and found it to be very destructive. The main channels west banks, where trees used to be, is eroding away. Almost a full mile of the "flood bypass channel" is completely filled in with gravel and silt from Coleman to 880 freeway. The concrete matting pulled out of its foundation is tossed around like pieces of rug. Big boulder rocks, that were used to protect the banks from erosion, are not working. These rocks are now scattered throughout the flood plain channel. All this is now creating ecological problems down stream. The idea of maintaining something that is just not working is not a feasible plan. In addition, our group has been monitoring other areas in the Guadalupe River, which have not been altered by the flood control plans yet. We found them to be in tact after all the recent floods. 25-6

25-6 The simple fact that these areas have remained the same for about 40 to 50 years, with the exception of several fallen trees, with minimal maintenance, speaks for its itself.

25-7 The person who best emulates natures design is David Rosgen. His theories and methods have been proven to work very well, and are more economical. We highly recommend you consult David Rosgen before pursuing any further or hire personal to implement his methodology for the Alternative Plan. Or if possible some one who has the same expertise to oversee the initial design. We do not condone the using of two different methods, we have found that the older method attacks David Rosgen method especially if you are not replanting the areas. So to say you have used some of David Rosgen designs, without consulting him first, is without merit. Especially if you do not have a qualified professional in this field. **How can you continue with the next flood control phases, when you haven't proven to be successful with the first completed designs.**

Photos and Documents will be submitted at a later date.

cc: **DFG**
USACE
SWBC
NMFS

Silichip Chinook
Salmon and Steelhead Restoration Group
Sincerely

Roger Castillo, Chairman

COMMENT LETTER 26

4-17-1997

Ca Native Plant Society
Santa Clara Valley Chapter
325 Union Avenue, Suite 164
Campbell, Ca 95008

Attention: Terry Neudorf
Environmental Resource Management Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686
Fax 268-7687

Re: Upper Guadalupe River Flood Control Project EIR

The California Native Plant Society is grateful for the request to participate in the Upper Guadalupe River Flood Control Project environmental impact report (EIR), the following concerns have been noted.

In late 1995, the Santa Clara Valley Water District conducted an opinion poll and found that those flood control projects that protected the environment, even if more expensive were preferred Therefore, we ask you to more fully analyze and consider the Minimize Vegetation Impacts Alternative. In studying this alternative we ask you to quantify your results in terms of short and long term effects on vegetation. 26-1

Concerning mitigation for trees in the Urban Forest at a rate of 1:1 (no net loss). We ask for a 1:2 level of mitigation for these trees being replaced since a no net loss mitigation compensation is uncommon. Moreover, the importance of upland habit next to riparian habitat should not be ignored and with it the opportunities for wildlife to gain food and shelter. We are particuliar interested in a soil type and the vegetation favorable to the Southwestern Pond Turtle since they are capable of migration. 26-2

Enhanced stream flows in the winter could improve the success rate of willows and other riparian plants species higher up the river bank. I have heard that Calabasas Creek's mitigation efforts has not been successful because an increase in stream flows did not occur. 26-3

Escaped exotics along the river, i.e., Arundo donax, Eucalyptus species, Ailanthus altissima, etc. could be removed over a long period of time, being replaced with native trees so that shade levels are kept at a maximum level. In this way native trees and shrubs could provide greater habitat value for wildlife. 26-4

Furthermore, pedestrian bridges could be built with the new Cal Trans path standard of 12 feet instead of the old 10 feet requirement. Also, it is suggested that all recreational opportunities for trails be explored so they can provide most value for the public. Finally, any private development occurring along the river could, as a condition of development, provide a trail adjacent its property. 26-5

Sincerely

Glenn Rogers

Glenn Rogers
Landscape Architect
License 3223

cc: Randy Talley
Terry Neudorf
Jim Ferguson
Afshin Rouhani

Howe, Greg

COMMENT LETTER 27

From: Howe, Greg
Sent: Wednesday, March 12, 1997 7:45 AM
To: 'DENNIS@SCVWD.DST.CA.US'
Subject: Guadalupe River Study
Importance: High

March 12, 1997

Mr. Dennis Cheong
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, Ca 95118

Dear Dennis,

I recently received a mailing from the SCVWD regarding proposed work on a number of reaches of the Guadalupe River. The mailing indicated that questions could be posed to you via e-mail.

I've lived at the below address for nearly seventeen years and have been required by my mortgage holder to maintain flood insurance. In those seventeen years, I've watched other areas nearer to the River flood a number of times. Being located very near the intersection of Bird Avenue and Willow Street, I, however, have never experienced any such problems.

27-1

I understand that the one hundred year theory is a variable used in the determination of flood plains. In the SCVWD mailing, text reads: "... convey flows, up to the 100 year flood, through the project area thereby reducing the frequency and severity of flooding in the vicinity of the Guadalupe River." My specific question is: will the proposed work result in modifications to flood plain maps? If so, might I, at last, be relieved of the requirement to maintain flood insurance?

As most of the people living in my neighborhood find the insurance premiums onerous and more akin to a tax levy rather than true insurance, I would appreciate whatever insight you can provide me.

Regarding the overall proposal as it relates to the environment and quality of life in our community, I believe that you and the SCVWD are to be commended. Thank you for your consideration and I wish you well as the project unfolds.

Sincerely,

George G. Howe
1266 Vernon Avenue
San Jose, Ca 95125
Phone: (408) 298-4876

TERRY NEUDORF
SANTA CLARA VALLEY WATER DIST.
5750 ALAMEDA EXWY,
SAN JOSE, CA, 95118

APRIL 14, 1997
SHT 1 OF 2

GENTLEMEN:

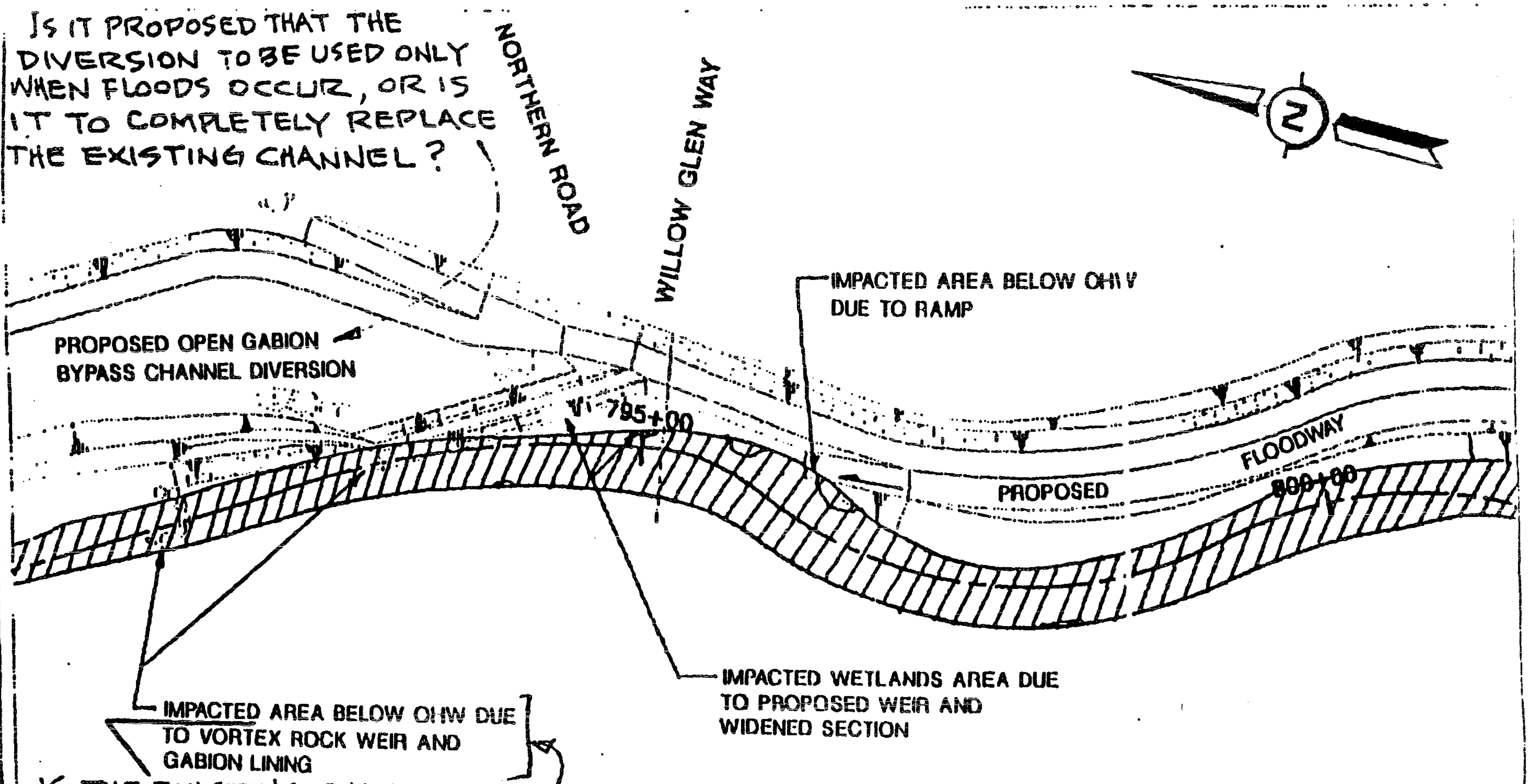
ALTHOUGH THERE ARE A VARIETY OF QUESTIONS RISING FROM THE DRAWINGS YOU SENT US, TWO PROMINEN ONES COME TO THE FORE IN REGARD TO THE DIVERSION OF GUADALUPE RIVER PROPOSED IN REACH 8 AT MACKEY AVENUE:

1. WHAT IS THE REASON FOR USING A NEW DIVERSION PATH INSTEAD OF INCREASING THE CAPACITY OF THE EXISTING RIVER BED? 28-1
2. WHAT IS YOUR PROPOSED NEW WATER VOLUME TO BE IN THE NEW DIVERSION AND WHAT IS THE NUMERICAL RELATIONSHIP BETWEEN ITS CAPACITY AND THE VOLUME OF THE HIGH WATER WHICH WE HAVE SEEN IN PREVIOUS YEARS? 28-2

VERNON DALE TRIPP
24066 TULIP DR.,
WILLITS, CALIF., 95490

COMMENT LETTER 28

IS IT PROPOSED THAT THE DIVERSION TO BE USED ONLY WHEN FLOODS OCCUR, OR IS IT TO COMPLETELY REPLACE THE EXISTING CHANNEL?



N
NORTHERN ROAD
WILLOW GLEN WAY
PROPOSED OPEN GABION BYPASS CHANNEL DIVERSION
IMPACTED AREA BELOW OHW DUE TO RAMP
795+00
800+00
FLOODWAY
PROPOSED
IMPACTED WETLANDS AREA DUE TO PROPOSED WEIR AND WIDENED SECTION
IMPACTED AREA BELOW OHW DUE TO VORTEX ROCK WEIR AND GABION LINING

IS THE EXISTING CHANNEL TO BE KEPT, OR TO BE FILLED IN?

APRIL 14, 1997
SHT 2 OF 2

VERNON DALE TRIPP
24066 TULIP DR.
WILLITS CALIF, 95490

REACH "8"

REDUCED PLAN
USE SCALE BELOW
0 .5 1 1.5

DATE 12/96
DESIGN T. IBARRA
DRAWN C. MENSING

Santa Clara Valley Water District

PROJECT PURPOSE:

IMPACTS TO EXISTING JURISDICTIONAL WETLANDS AND ORDINARY HIGH WATER FROM PROPOSED CHANNEL MODIFICATIONS

SCALE 1"=100'
SHEET

COMMENT LETTER 29

Santa Clara Valley
Audubon Society
Founded 1926

Friday, April 18

Dennis Cheong and Terry Neudorf
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118-3686
fax: 268-7687

RE: Guadalupe River EIR/EIS Comments

Dear Mr. Cheong and Mr. Neudorf:

The following are comments submitted by the Santa Clara Valley Audubon Society on the EIR/EIS for the Upper Guadalupe River Flood Control Project. As you know, our chapter is comprised of some 3700 members throughout the County with a passionate interest in wildlife and habitat.

In general, it is good to see the improvement in the alternatives considered here as compared to the existing and proposed projects for the lower reaches of the Guadalupe. This more progressive view is more in line with what the public appears to be asking for in future District projects.

Nonetheless, there is considerable work that should be done prior to approval of this EIR. Given the likelihood that some considerable time may pass before this project gets underway, the District should take the time needed to work with the environmental community and come forth with a project (and a funding mechanism) that we can support.

Alternatives

Has the District Contacted the Army Corps and DFG regarding the viability of the Stream Restoration Alternative? If not, it should. Only after such consultation--perhaps with the presense of local environmentalists--could we know whether this alternative should be discarded, adopted, or adopted in part. 29-1

22221 McClellan Road, Cupertino, CA95014 Phone 408 • 252 • 3747 Fax 408 • 252 • 2850

Printed on Recycled Paper with Soy Ink

29-2 Since the "Minimize Vegetation Impacts Alternative" is the same as the environmentally superior alternative (amongst those alternatives not dropped from consideration), why not in future refer to it as the "Environmentally Superior Alternative?" This would provide more clarity to the public when addressing the Board in letters or in person, as it would note that the preferred project is not the environmentally superior project.

29-3 This section does not provide an adequate rationale and analysis of why the environmentally superior alternative was rejected in favor of the preferred project. Such analysis and rationale is required by CEQA.

29-4 There should be an evaluation of an alternative that includes earth bypass channels only in reaches 10A, 10C, 11A, and 12. That would greatly reduce costs and socioeconomic impacts (loss of homes and businesses) resulting from a bypass in Reach 9.

29-5 Are there sub-alternatives or variations of the "Minimize Vegetation Impacts Alternative" that would reduce impacts to the riparian corridor and potentially lower the cost of the overall project (including long-term amintenance costs). The various aspects of such sub-altrernatives should be broken out and analyzed independandtly so that a menu of variations would be presented to the Board and the public.

29-6 In reach 11 near Ross Creek, is there an alternative that would change land uses (e.g. by moving or removing homes over 25 years) or the drainage pattern in the area and alleviate the neighborhood flooding problem without necessitating harsher treatment of the Guadalupe?

Construction Schedule and Elements

29-7 This section is confusing and appears to rely on assumptions that may not be the most realistic and therefore may not provide the Board and the public with the most complete information. For example, it is stated that the District expects the project to require about 10 years to construct. Under what circumstances (fiscal, environmental, and regarding the Relocation Assistance Plan) could that schedule be accomplished?

29-8 The District's current benefit assessment runs out in the year 2000 (please correct me if that is unture). How much money will the District then have for this project? What aspects of the project could be implemented with this funding only (i.e. what portions of project would the District commit to if only that much money were available)? Will the

District have to hold another benefit assessment prior to initiation of the project? 29-8

Table 3.5 assumes the benifit assessment will continue beyond the year 2000. What would the projected schedule be if this assumption were not made? Which of the two is more probable? 29-9

The EIR is vague as to when the barrier removal at Stream Guage 23B would occur. Please clarify. Would the success rate of the fishery mitigation be better and/or easier to determine if the barriers were removed at or even before the project begins? 29-10

No matter what construction schedule is finally decided on, this EIR/EIS will become legally stale long before the completion of the project. A schedule for updating the EIR (e.g. every five years), including a reevaluation of project and mitigation performance as well as changed circumstances and circulation to the public, should be included. 29-11

Fisheries

Why is the removal of the Blossom Hill fish barrier included as a cost of the project when that must occur as a condition of the "Settlement" with DFG regardless of what flood control is implemented? 29-12

Can anadromous fish successfully migrate through Lake Almaden to reach the upstream reaches of the stream system? The EIR should evaluate this. 29-13

While it is apparently true that the upstream tributaries to the Guadalupe could provide good habitat for anadromous fish, there is an inadequate description of stream habitat presented in the EIR. The conclusions in this area seem to be based on one brief study done in 1991 by the U.S. Fish and Wildlife Service. That report should be appended to the EIR and updated. 29-14

Mitigation and Monitoring Plan

The sequence and schedule for mitigation planting in Reaches 10B and 12 is unclear. Does this mean that the revegetation in these reaches would be implemented during the first fall after construction of Reach 6? 29-15

29-16 If construction of Reach 6 is not completed until the fall, will the revegetation project begin that fall?

Vegetation and Wildlife

29-17 The District has recently tried to renegotiate its deal with the Army Corps on mitigation for flood and erosion control projects in Calabases creek. Essentially, the District wants to provide less mitigation (less vegetation and different types) than they previously agreed to in order to receive permits. How often does this occur? This question is relevant to this EIR to help inform the public as to whether the mitigations proposed here will be adhered to over time.

29-18 On Calabasas, it appears the District could fulfill their mitigation requirements if they were willing to release more water down the creek. Would this project's mitigations have a greater likelihood of success--and would there be other, more environmentally beneficial mtigations made possible--if the District were willing to provide increased instream flows to the Guadalupe? This question refers to both fisheries and vegetation. If increased flows would help, what amounts might be needed and what times of year would they be best provided?

29-19 Could the District change the timing of the mitigation planting schedule (i.e. planting earlier) to better get an indication of how successful the mitigations are working?

29-20 The District should explore the possibility of slowly, over the life of the project, removing nonnative and especially invasive tree species and other vegetation from the project area. I understand that DFG and other agencies might have problems with this. Again, perhaps a solution could be reached if the District, those agencies, and the environmental community held a series of meetings on this proposed project.

29-21 In reach 7 and elsewhere, the District proposes removing ruderal scrub and replacing it with riparian. While riparian is more valuable to wildlife, scrub has its place as well and a combination of the two would be best. Many species use both the riparian areas and nearby uplands. Would the relationship between these two vegetative communities be compromised by this project? If so, what additional mitigation measures could be used (e.g. buying additional uplands)? What is the justification for replacing ruderal scrub at a 1:1 ratio rather than a higher number?

Maintenance

Has long-term maintenance of the various alternatives been analyzed both for its environmental effects and costs? The EIR should contain a proposed maintenance program and costs estimate for each alternative (including the stream restoration alternative) in order to better compare them. 29-22

What were the estimated costs of maintenance on the lower reaches of the Guadalupe River at the time of project approval and how do these compare with the costs to date and costs predicted in the future? These numbers are relevant to this debate in that the gross underestimate of maintenance costs has driven up the true costs to those projects. Had those costs been factored in originally, a different, more environmentally compatible alternative might have been selected. Knowing this may help inform the current decision facing the Board. 29-23

Miscellaneous

The costs of this project evidently were driven up dramatically when the City of San Jose rezoned certain parcels next to the Guadalupe in recent years. The San Jose Council did this despite the fact that they knew this project was being planned and would need to buy some of that land. Can you estimate how much that action drove up the costs of this project? Did the District contact the City and urge them not to proceed with the rezoning? Are there any more parcels that could be rezoned in a similar way, once again driving up costs and potentially reducing options for the District in the future? If so, the District should commit to opposing such moves and educating the Council regarding its land use decisions and how they have and might impact on this project. 29-24

Thank you for your attention to these comments.

Sincerely,

Craig K. Breon

Craig K. Breon

April 18, 1997

Hand delivered
Received
4/21/97

COMMENT LETTER 30

Terry Neudorf, Environmental Planning
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

UPPER GUADALUPE RIVER FLOOD CONTROL PROJECT, City of San Jose, Santa Clara County

Dear Terry,

In regards the Draft EIR/EIS for the Upper Guadalupe River Flood Control Project, I request a continuance for review of this project in that Volume III Appendices does not appear to be available for public review at this time. This Volume III identifies considerations of fisheries, birds and other wildlife, trees and riparian plants and wetlands, and regulatory agency considerations and permits. 30-1

Also, it would be fallacious to not review Reach A and Reach 13 in the full environmental assessment as well as soils and engineering so request that data as well. And there does not seem to be page 4.12-14 in my Volume I, (wetlands). 30-2

The HEP analysis and evaluation would be a third request for review at this time. 30-3

In Volume II, the Plates representing vegetation impacts, I am unclear which category reflects wetlands impacts. This is a vital area of assessment, and it is essential that linear feet of impact be depicted, as a general acreage in no way accounts for loss of habitat for water dependent flora and fauna. 30-4

In the Engineer's Report for the Guadalupe River Watershed Planning Study, there is again no coverage of Reach 13, and request that also in an addendum. 30-5

This Guadalupe River has been seriously impacted, by piecemealing of projects for flood control, transportation and development over the past decade, in a manner which is not in compliance with CEQA and NEPA law and guidelines. 30-6

I had hoped that this Upper Guadalupe River Flood Control Project would follow the original scoping document and due process for regulatory and environmental review, and incorporate a full watershed evaluation and integrated management plan that would indeed be valid for the next century. This does not do the job. 30-7

Therefore, in view of the long period of implementation that is planned for the Upper Guadalupe project, and in consideration of the precariousness of funding, the open-ended aspects of this EIR/EIS and the inadequacy of assessment of the Guadalupe River watershed cause me to find this study deficient. 30-8

At present the District is contracting for a new Lower Guadalupe River EIR for channel improvements to restore capacity to the river for a one percent flood plus three foot freeboard. There is a sediment problem. Yet neither this Upper Guadalupe River EIR/EIS of present review or the in process 'Middle' Guadalupe River COE Flood Control Project seriously evaluate sediment transfer. In this respect this EIR/EIS is deficient. 30-9

30-10 In the upstream watershed there is the extensive old Almaden Quicksilver Mines complex that impacts both Guadalupe Creek and Alamitos Creek with water quality point and non-point pollution from the mine tunnel runoff and tailings in stream. Some County remediation is in process on Alamitos Creek which should be referenced.

30-11 The thermal pollution on both Alamitos and Guadalupe Creeks is a watershed concern that impacts fishery potential and should be addressed in any assessment of the steelhead or chinook salmon habitat and sustainability of runs. Almaden Lake is an even more serious thermal pollution source and it is essential to review its instream management in Reach 13 criteria for fisheries and riparian integrity. Reach 13 has had such consistantly flooded riparian banks that most trees are dead above the drop structure. Thermal review of percolation ponds is needed here.

30-12 The sediment regimen for the watershed needs evaluation at the confluence of the Alamitos and Guadalupe Creeks. Toxics adhere to sediment so this too needs data.

30-13 As to how the sediment is carried, by what cfs stream flow and by what stream width and depth should be part of this environmental assessment; perhaps it is in Volume III. Any vegetation removal on any banks acerbates this sediment load and diminishes the biotic integrity of the stream. Wetlands removal does also reduce the ability of the stream to stabilize water quality impacts, both thermal and chemical pollutants. There appears to be an algae with a parasite of concern reported in Guadalupe Creek, just upstream of Reach 13.

30-14 Another component that should be evaluated in addition to the site specific water regimen of the watershed and the water supply reservoirs, is the volume and management of imported water to the Guadalupe River system. This import of water from the Central Valley was not a consideration in the original U.S. Army Corps evaluation of the storm event in the Guadalupe watershed, or the amount of flood flow from the 1% event. Not only does the imported water give a different reading to the volume of water residual in the reservoirs at the beginning of any given water year, but it results in a different level of soil saturation within the river system and the valley floor, to absorb flood flows.

30-15 In short, Chapter 3 Preferred Project and Alternatives did not quite cover all aspects of water supply reservoir allocation vs. flood control reservoir use. It is my conservative assessment that this project will not assure protection for the hundred year event as it was originally conceived, because imported water has doubled the water supply to the Valley.

30-16 It is also my conservative opinion that there is some global warming and that San Francisco Bay will be rising, by the year 2022 not falling. Historically it appears that the Guadalupe River and adjacent sloughs extended inward to the present Montague Expressway and that the water table will always be very high to that location which will always impact local drainage severely. This natural existing 'wetlands' condition should be factored into this EIR/EIS, if it is to honestly assess the flood potential of the Guadalupe River.

30-17 The reason that further in depth review of all the above concerns should be undertaken at this time is that, inspite of all your efforts, the riparian and wetlands loss is still too severe to retain the biotic integrity of this river for steelhead and the chinook salmon, and the waterfowl of the Pacific Flyway.

The Guadalupe River has an enormous importance to the viability of the birds and fisheries of the South San Francisco Bay, and to the San Francisco Estuary as a whole. Every dollar spent on this river should improve the survival and biodiversity of species of flora and fauna, not degrade their very existence. 30-17

Replacing a diverse riparian corridor with willows will not support biodiversity. On Ross Creek, the installation of 8,600 linear feet of articulated concrete matting translates as more than a loss of a third of an acre of wetlands to me. It is no where documented as to who did this wetlands delineation, what the real linear footage of loss is; a mile of stream excavated to a 30 foot width can it be compensated for off-site in the Bay area as a third of an acre of wetlands? Is it rather a mile of wetlands loss, times two for each bank, times three for irreplaceable riparian wetlands value, and where is the six miles of river bank? 30-18

Attached please find a map of areas favorable for ground water recharge and note the value of Ross Creek in this regards. To line this prime percolation creek with 8,600 linear feet of articulated concrete matting is not an honest watershed management integration with flood control, to my rationale. Please review the potential for upstream retention, and offstream retention. 30-19

The concrete channel at the Canoas confluence with the Guadalupe River seems to have some recharge potential. The orchard in this vicinity could have helped in the flood flow backup in this area. This would also be the tributary that would carry any spillover of floodwaters from the Coyote Creek watershed. This was touched on in the original U.S. Army Corps assessment was it not? The Corps estimate of the hundred year flood flow was put at 21,000 cfs in downtown San Jose for the Guadalupe River in that earliest document. 30-20

Another aspect of the preservation of biodiversity is challenged by the ever-present District maintenance roads with their herbicide spraying of riverbanks. This is the most unpopular District practice, next to cementing in creeks, and the roads should be designed to be as far away from the creek flow as possible. To remove riparian vegetation in this chemical manner is in conflict with good watershed management practices and highly questionable from the standpoint of non-point source pollution guidelines and sediment transfer through erosion. 30-21

In regards the elusive Volume III and HEP, species that should be accounted for in habitat preservation are steelhead, chinook salmon, osprey, southwestern and western pond turtle, eels and red-legged frog. Reach A has the pond turtles and osprey and chinook salmon. The red-legged frog is most likely found in the upper watershed and is to be considered in existence unless proved otherwise. In storm events frogs, fishes and pond turtles get washed downstream from any upper watershed tributary so must be considered at all reaches of this project. 30-22

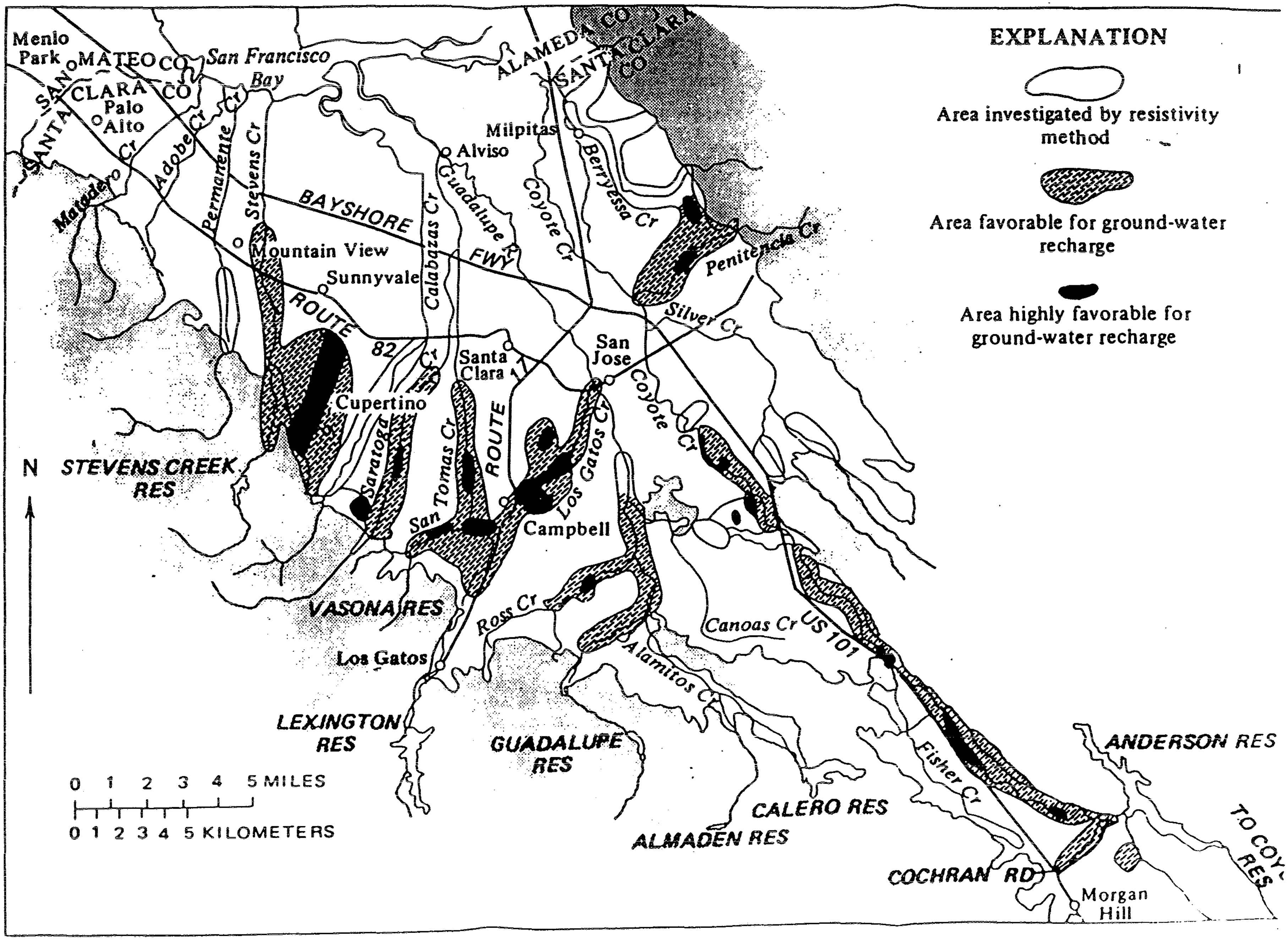
The bypass alternatives that will save instream vegetation are the preferred alternative for me as long as the bypass is high enough in bank to leave the bankful and sediment carrying flow in the main channel, ie Reach 10 B. The high cut bank in Reach 9 on the East with maintenance road in stream is questionable. 30-23

In hopes that the request for continuance, is granted.

Libby Lucas

Libby Lucas
174 Yerba Santa Avenue
Los Altos, CA 94022

COMMENT LETTER 30



COMMENT LETTER 31

PUBLIC COMMENTS--

UPPER GUADALUPE RIVER FLOOD CONTROL PROJECT

SCVWD PUBLIC HEARING -- 3 APRIL, 1997

Comments from:
Russell H. Robinson,10825 W. Estates Drive
Cupertino, CA 95014
408/253-2529

Support the project.

Representing the South Bay Yacht Club, Alviso, C

Good evening. For the record my name is Russ R 325 W. Estates Dr., Cupertino, CA 95014. Tonight I am here on behalf of the South Bay Yacht Club in Alviso where I am the Staff Commodore.

The South Bay Yacht Club in Alviso wants to voice its support for the Upper Guadalupe River Flood Control Project. The South Bay Yacht Club was 100 years old last year and over that time the members of this historic club have watched the Guadalupe River roll past its front door. However, due to the flooding caused by the river topping its banks, many times the river rolled past the back door as well. The last time was in 1983 when Alviso flooded and we had 5 feet of water in the club house.

A flood control levee project by the Santa Clara Valley Water District in 1984 has minimized that threat for us by raising our club house up on the new levee. The Community of Alviso still sets below sea level and a constant concern surfaces each time there is a big storm. Any project which reduces the threat of flooding is welcomed by our club and I am sure by the citizens of Alviso. In addition over the past few years, the electronics industry has expanded along North First and now occupies much of the space in what is known as the golden triangle. A continued and economically devistating threat from flooding exists there as well. 31-1

Our endorsement of this phase of the Guadalupe flood project is unalterably tied to the completion of the other phases and the continued maintenance of the Guadalupe channel to the San Francisco Bay. To complete this phase and the downtown San Jose phase without cleaning the channel is akin to buying a shiny new funnel which has a plugged or severely restricted neck. Pour in the liquid faster than it can not get out of the funnel and it will run over the side. The same situation exists here whereby the new renovations to the Guadalupe upstream may only form a big lake which can then flood if the water cannot freely pass through and reach the Bay.

Once again we strongly commend the efforts on the part of the SCVWD and urge that if possible the completion of all of these phases of work on the Guadalupe be accelerated. Let's tame the Guadalupe once and for all.

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COMMENT LETTER 32

Reg Fut

United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
600 Harrison Street, Suite 515
San Francisco, California 94107-1376

ER 97/0098

Colonel Richard Thompson, District Engineer
U.S. Army Corps of Engineers
San Francisco District (DESPN-DE)
333 Market Street, Suite 801
San Francisco, California 94105-2197

May 27, 1997

Dear Colonel Thompson:

The Department of the Interior (Department) has reviewed the Draft Environmental Impact Statement (DEIS) for the Upper Guadalupe River Flood Control Project (Project), San Jose and Santa Clara Counties, California. The following comments are provided for your information and use when preparing the Final Environmental Impact Statement (FEIS).

GENERAL COMMENTS

The proposed project includes several modifications to enhance floodway capacity. The modifications would result in some limited potential for near-stream vegetation on higher bench cuts through the use of partial bypass and cribwall features. Nevertheless, maintaining certain project reaches within existing flood easements may result in significant thinning of the riparian corridor, permanent hardscaping, and/or revegetation off-site or away from the stream edge. To avoid these impacts while maximizing corridor quality, the Department recommends adding the modifications described in the specific comments to the proposed project. The FEIS or the attendant engineering report should quantitatively evaluate the susceptibility of the proposed mitigation areas to erosion under design conditions. 32-1

The DEIS does not sufficiently document distributional changes in important vegetative features which would occur with the project. They specifically include the type of vegetation allowed, corridor width, elevation above the invert, distance from the stream edge, and local soil and groundwater availability. Firstly, the proposed designation of top-of-bench plantings as "riparian" and the prospective success on such terraces is uncertain. Over the long term, mitigation plantings would be subject to natural variation in groundwater levels that may recede below the roots of shrubs and some trees, causing death or inhibited growth. Such areas between floodways and the stream would also lack significant surface runoff influence. These higher plantings are intended to be composed of more xeric species like oak and sycamore resistant to drought. This portion of the mitigation (30 percent of the total), while expected to provide sufficient habitat value, is different from the lost vegetation near the channel invert and slopes. Secondly, the willow riparian plantings on low benches (15 percent of the total) 32-2

32-2 would maximize floodway capacity but would affect many habitat components associated with large trees, such as perches, input of large woody debris, undercuts, snag formation, and arboreal habitat volume. Differences between the impact and mitigation vegetation distribution and quality need to be fully discussed in the FEIS. Scrub-shrub, albeit lower value, is partially riparian in the impact area; it should be considered in the habitat loss and mitigation analyses.

32-3 The monitoring plan (Plan) for long-term mitigation success, beyond the minimal five years suggested in the DEIS (Table 8-1) and the contingency measures in the event of mitigation failures, should be revised to ensure that habitat mitigation goals are met. The Plan should include: 1) key characteristics of the riparian and stream cover, soil moisture, streamflow, and water temperature and 2) an agreement with the Fish and Wildlife Service (FWS) on parameters and monitoring protocols.

32-4 Performance criteria for Shaded Riverine Aquatic (SRA) cover should be incorporated into the Plan. These criteria should cover: a) persistence of surface water in the mitigation sites equivalent to the impact sites, b) shade cover by vegetation and undercut banks compared to target levels, and, c) mitigation of in stream temperature impacts to pre-project levels.

32-5 The FEIS should include hydrologic criteria, such as soil moisture and depth of the groundwater table which would be maintained in perpetuity in all mitigation areas through naturally-occurring flows or, if necessary, upstream releases past stream gauge 23b. The biological basis for such criteria should be stated in the FEIS, and it should be consistent with the needs for riparian growth as specified in the mitigation plan.

32-6 The Plan should include specific remedial actions and timetables in the event of mitigation failures, and the remedial actions should be a legal responsibility of the local sponsor.

32-7 The DEIS identifies many projects, but does not quantify the actual length of existing bank hardening elements or the impact of those elements associated with this or pending future projects. The FEIS should clearly describe the qualitative changes in riparian composition and distribution which would occur with the project and fully document cumulative impacts.

32-8 The assessment of cumulative impacts has two major problems. Firstly, the only parameter considered in the DEIS is acreage of riparian habitat impacted and mitigated. In addition, one of the most significant impacts of bank protection is that it converts natural bank, which has high value aquatic and terrestrial habitat features, to hardened bank, which has no such features and cannot support vegetation. Therefore, the FEIS should provide an accurate accounting of the existing lengths of natural and hardened bank in the project area and the length of conversion of natural bank into hardbank due to project construction. Secondly, the DEIS considers only the major projects, neglecting a number of other smaller projects (discussed on page 4.12-7 to 12) which have undoubtedly caused additional loss of riparian habitat and increased bank hardening. To make the analysis more complete, all existing bank protection features in the project area should be discussed in the FEIS, and the loss of natural bank and riparian cover should be determined and addressed.

The FEIS should also include the following information and additional study results:

A reach-specific summary of anticipated mitigation conditions classified by plant composition (palette distribution), elevation above the channel invert, distance from the channel edge, and relevant corridor parameters, such as (a) contact length with riparian forest cover and (b) basal area of large trees (e.g., fitting criteria such as at least 30 feet tall and diameter of at least 15 cm) at the water edge and within 40 feet of the low-flow channel edge; 32-9

An updated reach-specific baseline survey of terrestrial cover-types in the impact areas and slope-corrected areas to allow comparison of the existing condition of the impact areas with the proposed mitigation types, in terms of plant composition, elevation above the channel invert, distance from the channel edge (assuming a stream edge at the one-third bankful stage), and appropriate corridor parameters (see below); 32-10

Corrections to SRA and riparian areas due to differences in water levels assumed for the 1984 terrestrial cover-typing done by a consultant, Habitat Restoration Group, and the 1993 SRA survey conducted by the FWS; 32-11

An evaluation of soil types, groundwater depths, and responses in different water-year types and in proposed mitigation sites with particular attention to Reach 10b. Such studies should be sufficient to evaluate the probable long-term success of vegetation on these sites with irrigation ceasing within 5 years of planting; and 32-12

An evaluation of riparian impacts, mitigation, and thermal impacts on stream temperatures of this project in combination with the Lower (downtown) Guadalupe Flood Control Project. Mitigation areas of the upper and lower projects should be clearly distinguishable. 32-13

Historic and Archeological Resources

Because the proposed project is a Federally permitted undertaking under the jurisdiction of the U.S. Army Corps of Engineers (Corps), the National Historic Preservation Act (NHPA) of 1996 as amended (16 U.S.C. 470 et seq) and specifically Section 106 of the NHPA applies. Section 106 states prior to the expenditure of any Federal funds for the undertaking, the effects upon National Register of Historic Places (NRHP) sites or sites eligible for inclusion in the NRHP must be defined. If the State Historic Preservation Office (SHPO) determines that the proposed project would adversely impact these resources, appropriate mitigation measures need to be developed to decrease the level of impact below significance. The mitigation 32-14 measures developed through SHPO consultation must be identified in the FEIS.

32-14 The FEIS needs to provide or adequately summarize an inventory, description, and evaluation of potentially affected properties. It should also needs to provide a determination of whether any properties within the project area are eligible for listing on the National Register of Historic Places. In addition, the FEIS needs to document that the project has been coordinated with and reviewed by the California SHPO. Finally, the nature and extent of archeological resources should be adequately addressed.

The archeological monitoring measures proposed by the DEIS are an inappropriate means of completing an NRHP inventory and would likely not constitute acceptable mitigation of impact measures if the archeological sites are to be determined eligible to the NRHP.

SPECIFIC COMMENTS

Comments on Fish and Wildlife Issues in the Main Report:

The FWS has prepared a Fish and Wildlife Coordination Act Report (FWCA Report) for the Corps of Engineers' San Francisco District, which included evaluation of the project proposed in the DEIS (except for non-Federal reaches A and 6). This Report was provided to the applicant on April 25, 1997, and identified the following potential project modifications and alternatives as means of reducing environmental impacts. These modifications and alternatives, described below, should be addressed in Chapter 3 in the FEIS:

32-15

1. Design for additional floodway capacity (widening, box culvert, bypass extension) to allow for more floodway vegetation (especially large trees) or avoid impacts entirely. Suggested modifications would include:

    (a) increasing the width of the floodway channel from Willow Glen Way to the Pine Island Bypass, using currently undeveloped San Jose Water Company property, and allowing more vegetation on this widened bench;

    (b) constructing a box culvert bypass around Reach 9 and 10a, under Almaden Road (or adjacent parking lots, e.g., upstream of Curtner Avenue) from STA 810 to an exit just north of Almaden Expressway Southbound;

    © increasing the width of the floodway channel on the east bank between Hillsdale Avenue and the Capitol Expressway, onto a developed area now used as a parking lot, and reducing maintenance of the east bank to allow for more vegetation;

    (d) increasing floodway width on the west bank from Chard Avenue to Ross Creek, using one northbound lane of the Almaden Expressway. The increased capacity should be used to permit unlimited stream edge riparian on the east bank, currently designated as a maintained floodway. An additional lane on median strip land would alleviate any unacceptable reduction in traffic capacity;

(e) acquiring sufficient property immediately upstream of Ross Creek to obtain floodway capacity on the west side, and to allow revegetation on the west bank as far as possible up to Branham Lane; if modifications 4(e-f) are not possible, a secondary option would be to relocate some of the revegetation area from the edge of the floodway to the bank of the stream channel; 32-15

(f). in order to obtain more cross-section for revegetation here, excavation of a widened westside floodway should be addressed. It would involve setting back the west levee in Reach A and rebuilding Airport Boulevard on top of the levee between I-880 to Airport Island Bridge. This would rehabilitate SRA cover on as much as 2 miles of streambank. It would be timely to do this in concert with the proposed widening of Airport Boulevard (p. 5-4).

2. Restoration of a low-flow channel in Reach 12 through relocation of percolation ponds off-stream as described under the MVI alternative (SCVWD 1997). This feature would involve discontinuing operation of the two in-stream percolation ponds between Branham Lane and Blossom Hill Road, excavating a low-flow channel from the first seasonal dam along the west side to future Chynoweth Avenue as well as a bench on the west bank upstream of Chynoweth, and revegetating both sides of this new channel, and both sides of the existing channel up to Blossom Hill Road. The pre-existing large channel would function as a bypass for floodflows, and the new channel would contain base flows and have unlimited vegetation. The stream channel and riparia may receive some water through lateral groundwater movement from adjacent percolation ponds. 32-16

3. Replacement of traditional existing or proposed riprap with biotechnical features. They consist of: (a) downstream of the first boulder biotech site on the west bank (STA 760), (b) proposed stepped gabions on the west bank opposite the Pine Island Bypass (STA 803-805), © STA 810, east bank, where Almaden Road is closest to the river, (d) proposed stepped gabions on the west bank opposite the Malone Bypass; (e) unvegetated area near the existing west bank ramp downstream of Willow Glen Way; (f) west bank revetment upstream of Willow Glen Way bridge; (g) west bank revetment downstream of the Almaden Expressway Southbound crossing, and (h) bordering access ramps at many locations. These biotechnical features should maximize the use of natural materials (wood and vegetation) and minimize the use of rock and hard structure. Biotechnical methods such as described in Appendix B of the DEIS should be given first priority and, if traditional bank protection is employed, the rationale for excluding biotechnical methods should be provided in the FEIS for each of these candidate sites. 32-17

32-18

4. Minimization of ramps and roads as follows: (a) eliminate the east bank access ramp upstream of Alma Avenue, which appears to be duplicated by the access ramp downstream of Alma Avenue where maintenance vehicles would be required to back down the remaining ramp to access area south of Alma; (b) reposition the east bank access ramp upstream of Willow Glen Way to allow access is beneath the bridge (slated to be replaced), reducing impacts to high quality vegetation; and © eliminate at least one of the three ramps all within 400 feet of Malone Road.

32-19

5. Modification of designated "boulder biotechnical" erosion repair sites to minimize hardening of channel banks and bottom. In some areas in Reaches 7-9, the Plan cross-sections suggests a geoweb on the steepest slopes. but calls for a continuous cover of 3.5 foot diameter boulders, presumably for grade control, on the channel bench to bank toe. This erosion control method would limit shrub layer vegetation, causing acceleration of water velocities over the repaired areas which may result in additional erosion downstream.

32-20

6. Wherever possible, the bank edge at these sites should be stabilized by using natural materials, such as live logs and rootwads, rather than boulders. Where rock placement is needed, small rock, (not more than quarter-lton) should be used at the bank toe and channel incision should be managed by using partial cross-channel grade stabilizers. We anticipate the dimensions of such a grade stabilizer to be about 3-5 feet wide and deep. buried at grade and spaced 130-150 feet apart corresponding to about 6 inches drop in grade. This should be sufficient to control erosion. The FEIS should include a discussion and evaluation of this concept.

32-21

7. Supplementing lower-quality, non-native ruderal-scrub with native riparian plantings at sites not currently designated on the mitigation plan. These sites include the: (a) east bank (STA 756-63); (b) west bank, just downstream of Alma; © west bank, downstream of Ross Creek (Reach 11b); and (d) off-site, in Reach 6, low scrub on both banks just downstream of the Southern Pacific Railroad crossing.

32-22 Page ES-7 Revegetation is referenced as a form of flood protection modification. This is not so, and this reference should be corrected in the FEIS.

32-23 Page ES-8 Table 1 should note that Reaches 7-9 have some bank protection in addition to the bypass and Reach 9 has some bypass in addition to widening elements.

32-24 Page ES-13, Figure 8 The typical section in Reach 10A suggests tall trees remain on the east bank. However, the plates (Volume II) show these to be willow replantings, and the text indicates that the bench cut will not save existing trees. This inconsistency should be corrected in the FEIS.

In the description of the no-project impacts, continuous shade of riparian forest should be restated as "overstream" riparian shade.

Page ES-17. Maintenance and Overhead Cover The statement that native vegetation on the banks would not be removed, contradicts the statement just prior to it that says, native vegetation in a 25-foot low flow channel corridor would be removed. This vegetation consists of branches from trees set on the bank. The FEIS should clearly state overhanging branches, not just those protruding into the river, are to be removed as a standard maintenance practice. 32-25

Page ES-20. Table 3 The FEIS should state the National Marine Fisheries Service (NMFS) and not the FWS would conference under the ESA for steelhead. This species is proposed by the NMFS for listing under the ESA as endangered. 32-26

Page ES-22. Water Quality The monitoring of mitigation measures mis-referenced in Appendix C is actually in Table 8-1. The FEIS should make this correction. 32-27

The proposal provides three alternatives (no action, preferred, and minimal vegetation impact) for channel modifications to increase the capacity of the river to contain a 100-year flood event and minimize property and resource damage in future storm events. The Santa Clara Water District (CEQA) and the Corps (NEPA) are the respective lead agencies for the proposed project. 32-28

Page 3-46. Mitigation Banking It is not clear from the rest of the report, whether this bank is included in the totals for riparian and the SRA mitigation reported later in chapters 4 and 5, or if it is separate and in addition to the figures reported in Tables 4.12-7 and 4.14-5. The FEIS should clarify if this bank was included in the mitigation totals and how the acreage and linear feet values were determined. 32-29

Page 4.12-4. Revegetation Type The FEIS should explain how the proposed bank edge riparian vegetation, would compare with the historical condition of willows, cottonwoods, and sycamores. State clearly any differences in how the willow species in the revegetation plan would differ in height and trunk diameter from those which occurred historically. 32-30

Page 4.12-26. Ordinance Tree Losses The 250-300 ordinance trees to be lost are a very significant proportion of the 832 in the project area. The FEIS should make this proportional impact more explicit. 32-31

Page 4.12-23. Gap Analysis, Corridor Degradation, Table 4.12-6, Figure 4.12-5, and accompanying text The use of mean gap length (presumably on one side of the bank), without regard for stand width, distance from edge of bank, species composition, opposite bank vegetation, or vegetation height, and with exclusion of scrub-shrub, gives the false impression that certain reaches are not adversely impacted, such as Reach 9 and 10a. Here, the 32-32

32-32 continuous vegetation on both sides would be replaced by narrow bands of vegetation, some of willows with lower maximum height and trunk diameter than currently present at these sites. The effect will be a degradation of the corridor which is not revealed by comparison of impacted and mitigated acreage of woody vegetation. Also, we disagree with combining Reaches 10b and 10c for this analysis; they have completely different existing and future project conditions. Additional evaluation of corridor impacts should be included in the FEIS.

32-33 Page 4.12-25. Text Regarding Omission of Scrub-shrub From Impact Analysis (Also refer to pages 5-13, Table 5-4, ES-26, p 4.13-18) We disagree that 7 acres of scrub-shrub loss is not significant and believe it should not be categorized with upland. All losses of woody vegetation are significant and must be mitigated. As it occurs on the channel slopes and overlapping species composition in some cases, much of the scrub-shrub constitutes riparian habitat in the project area. In other projects where interspersion of forest and scrub-shrub occurs, it is usual to combine them for compensation analysis purposes. Pursuant to its Mitigation Policy, the FWS places scrub-shrub in Resource Category 2 for evaluation purposes, and recommends that values be replaced. The FEIS should state the overall losses of both riparian forest and scrub-shrub at every mention in the document and compare them with the mitigation habitat. The replacement of scrub-shrub with forest is acceptable in-kind compensation because the scrub-shrub, to a large extent, represents disturbed/maintained sites in the river corridor.

Page 4.12-25. Impact V-1 (Also refer to ES-27 [Table 4] Text Regarding Quantification of Corridor Impacts) The parameter "total length of gap" is misleading since significant portions of the project have much narrower corridors, or revegetation set some distance away from the bank, yet this is not indicated as a change in habitat. Portions of the project have a narrow band of willows replacing what is currently moderate aged, tall trees.

32-34 The interface of the bank length with the riparian cover (existing, impacted, and post project) should be addressed in the FEIS to reveal any distinctions between the type and width of vegetation corridor. To better describe this impact one possibility would be to evaluate impact lengths, only for those existing and mitigation areas where the corridor band width would exceed at least 25 feet, and have species (excluding Arroyo willow) which would exceed 30 feet in height and 15 cm in diameter. The net change in habitat should include changes in the nature of the corridor riparian vegetation. Another possibility would be to quantify various corridor length categories, such as the length of bank hardened, the length of stream with one-sided vegetation and two-sided vegetation, and the length of adjacent-to-bank corridor in width categories of < 10 feet, 10-20 feet, 20-40 feet, and > 40 feet.

32-35 Page 4.12-27. Text Regarding Erosion Repair Description The FEIS should state the length of river bank being affected by this project element. If affecting a 20-foot band, about 1,700 feet of bank are affected by 0.78 acres of such hardening. The length of bank is of prime importance in quantifying corridor impacts.

Page 4.12-28. Table 4.12-7 Location of Mitigation Plantings The largest individual gains in riparian, in Reaches 12-13, and 7-8, occur in the respective vicinities of percolation ponds and high island revegetation sites. The FEIS should discuss the differences in habitat quality which may occur as a result of displacement of vegetation either horizontally or vertically away from the invert. Include an appropriate discussion of how this is expected to influence revegetation species, their growth, under story shrub cover, and sustainability during drought. 32-36

Page 4.12-31. Text Regarding Coordination Act Report Updating The Federal portions of the project are the subject of a very recent (April 1997) FWS revised draft Fish and Wildlife Coordination Act report which updates both aquatic and terrestrial Habitat Evaluation Procedures (HEP) based on significant project changes and additional field sampling. We recommend this be carefully reviewed and appropriate values be included in the FEIS. 32-37

Page 4.12-32. Text Regarding Sustainability of Narrow-width SRA Floodway Plantings The location of these plantings raises the concern that they may be subject to higher, more erosive velocities by the adjacent floodway. Non-compacted soils are needed for replanting and these may be washed away. Information on the approximate water velocities that would be expected at these sites, specifically on the east bank of widened areas of Reaches 9 and 10a should be provided in the FEIS.

32-38

The DEIS describes canopy widths of SRA plantings when mature ranging from 10 to 50 feet. However; the typical Section of Revegetation in Volume II shows a large tree lacking low limbs (STA831-42) or low willows (STA 844-51) shading a floodway. From Malone Road Island to Almaden Expressway Southbound, most of the east bank revegetation is 10-20 feet tall. The FEIS should describe the distribution of allowable canopy widths in Reaches 9 and 10a.

Page 4.12-34 and ES-32. Text Regarding Mitigation Monitoring Monitoring of vegetation for only five years would not be adequate, since the plants would be irrigated for much or all of this period. Long-term monitoring, for the life of the project, is needed to ensure that mitigation goals are met. This is especially important since significant portions of the mitigation are in both high bench areas or potentially drier river reaches like 10b. 32-39

Page 4.13-13. Table 4.13.1 Text Regarding Responsibility for Endangered Species Act of 1973, as amended (ESA) Contrary to the table and text, the California red-legged frog has been noted in records on Guadalupe, Alamitos, and Los Gatos Creeks, which are all upstream of the project area. 32-40

Page 4.13-20. Text Regarding Concurrence of FWS Prior to HEP Work The DEIS inaccurately states the FWS concurred with the terrestrial HEP analysis conducted by the Habitat Restoration Group and BioSystems Analysis. In fact, the FWS objected to this work. 32-41 and suggested a higher mitigation ratio than indicated in the HEP results to which the local sponsor concurred (p. 4.13-2). The FEIS should provide additional discussion of the rationale for the DEIS concurrence with the FWS recommendation of a 2:1 mitigation ratio for riparian cover.

32-41 Potential issues of concern with the prior HEP were: (1) no data were made available from this work nor description of methods to compare it with FWS protocols, 2) the work appeared to have been conducted nearly a decade ago without FWS participation, 3) the sampling sites and applicability to the revised design was questionable, and 4) riparian scrub-shrub was not included in the analysis. The FWS, in the 1993 draft FWCA Report, objected to the HEP and has since conducted a new terrestrial HEP, specific to the impact areas for the redesigned project. Therefore, the FEIS should incorporate the values from this HEP and note the use of the compensation ratio presented in the HRG report would not adequately offset the loss of habitat values resulting from project implementation. The FEIS should discuss problems with the original HEP, and the findings of the recent HEP presented in the FWS's 1997 FWCA Report, which alleviates these concerns and supports the 2:1 mitigation ratio for riparian cover used in the DEIS.

32-42 Page 4.14-10. Life History - First Paragraph The FEIS should note that Skinner (1962, p. 136) summarized steelhead reproduction in tributaries of the Guadalupe River below Guadalupe Dam. Also note that a former, striped bass fishery was present in the lower river. The FEIS should note that the proposed listing under the ESA is for endangered status.

32-43 Pages 4.14-12 to 16. Chinook Salmon Habitat Requirements -Temperature The high temperatures cited in which trout were observed, or which cause death, are for very short term exposures (several hours) such as experienced in a diurnal cycle, and inaccurately portray the water temperature needs of this species. "Approaching 74 degrees" could mean the maximum temperature for which the mean is 68 degrees. Although trout may survive short-term exposures to higher temperatures, they require temperatures lower than about 70° Fahrenheit (F) for physiological reasons; this species would experience a weight loss even with unlimited food above this temperature. Several inferences are made that trout can be sustained in warmer waters, specifically, reference to a 77°F upper lethal temperature. Also, the DEIS misquotes the FWS's HSI model (Raleigh et al. 1984) by saying that growth ceases at 73°F. The references cited in Raleigh et al. 1984 (e.g., Hokanson et al. 1977) indicate an upper endpoint for the optimum growth range at around 19° Celcius © with no dial fluctuation, and 20.5°C (69°F) as the point beyond which growth ceases. It should be made clear in the FEIS that trout is a coldwater species, generally restricted to waters with maximum sustained mean daily temperatures of less than about 70°F, and can survive only short-term exposure above this temperature.

32-44 Pages 4.14-12 to 13. Text Regarding Straying If the theory that the importation of water (by the Santa Clara Valley Water District, which is sponsoring the flood control project) is causing straying, then it should be recognized in the FEIS as an impact of the percolation program and mitigated prior to issuance of a permit. 32-44

Pages 4.14-14 to 15. Text Regarding Spawning Distribution After referring to salmon redd surveys which showed over 80 percent of the redds were observed in the downtown area, the DEIS indicates that factors like access, changing flow conditions and water clarity may have affected the results. This implies that the fish could have been using the upper reaches in higher proportion than actually observed and is of significance because mitigation areas are upstream of the impact areas. Some mitigation areas (barrier removal) rely on the assumption that fish passage is blocked. While a concentration of redds occurred in some graveled areas of the upper project, most fish seem to remain below the confluence of Los Gatos Creek. This may be more due to a better combination of flow, depth, and substrate conditions in the lower river than to barriers between creeks, upper river, and lower river. The FEIS should discuss, in general, the flow, depth and substrate conditions in the upper river and creeks compared to the lower river, and evaluate how chinook salmon habitat preferences compare to their distribution in the Guadalupe River system. 32-45

Page 4.14-19. Text Regarding Spawning and Rearing Habitat The FEIS needs to discuss and correct whether or not the reaches with 71-79 percent pool or pool/runs are equivalent to those with 24-27 percent riffles or riffle/runs (73-76 percent pool or pool/runs). 32-46

Page 4.14-22. Text Regarding Upstream Tributaries The citation White (1991) should be added to the reference list in Chapter 11. 32-47

Pages 4.14-22 to 24. Factors Affecting Anadromous Fish Production Although barriers may affect salmonid distribution, it is worth noting that most of the observed spawning activity is some distance downstream of these barriers (in the downtown and airport area). It is possible that the flow and depth conditions are more desirable here, and that removal of barriers may have a limited effect on the spawning distribution of chinook. The FEIS should address this possibility and cite any data specific to the water quality in the upstream and downstream reaches. 32-48

Page 4.14-27. Text Regarding Potential for Bank Failure in Narrow Revegetation Areas The FEIS should address the potential impact of bank failure under existing and post-project conditions. Certain portions of the river have exceedingly narrow riparian revegetation corridors (10 feet, e.g. east banks of Reaches 9 and 10a). These areas are immediately adjacent to floodways which may occasionally experience high water velocities. The FEIS should discuss the potential for bank erosion in these areas, taking into account the soil conditions in the revegetation area (particularly Reach 10a, which would not have any preserved trees on the east bank), the design velocities in the floodway and river thalweg, the height and side slope of the bank, and the assumed maximum acceptable non-erosive velocities. 32-49

32-50 Page 4.14-41. Mitigation Measures Undercut Bank Mitigation Undercuts in the project reaches, based on our observations, have formed where there are steep banks, at least 5 feet above the channel invert and large, shallow-rooted trees that bind the upper soils at the bank edge. The FEIS should identify the areas that could potentially form undercuts, based on bank steepness, height above the invert, and ultimate size of the vegetation (large trees such as cottonwoods). The FEIS should include a figure in the engineering report which would conceptualize the revetment or potential biotechnical approach that could be used.

32-51 Page 4.14-42. Text Regarding Overhead Cover Mitigation Overstream vegetative shade varies from year-to-year, increasing with time since the last maintenance and last major flood event; both will reduce the extent of such vegetation. Moreover, vegetation close to the bank (especially within 5 feet) has high potential to provide overstream shade in the future and does provide side shade. By limiting evaluation of impacts and mitigation to overhead shade only, losses of potential for shade and side shade may not be mitigated. Similarly, the FEIS should state that bank edge mitigation would not provide overstream shade on a 100 percent basis.

To evaluate the need for bank edge vegetation we evaluated two additional parameters: (a) actual intersection with the stream bank and intersection with a line five feet away and parallel to the stream bank, and (b) contact length with riparian forest cover. For the bypass alternative, we determined that the ratio of intersection with stream edge to the five foot offset line was about 0.81 (we confirmed the losses in Table 4.14-6 to about 1 percent of the reported value). Thus, to obtain 1:1 mitigation for 1,000 feet of loss of overstream shade, at least 1,190 feet must be planted within the five feet of the stream edge. The length of interface of stream edge with riparian cover (independent of width or palette type) is predicted, based on the plate volume II, to increase by about 4,000 feet with the project with most of the losses occurring in Reaches 9 and 11b-c, and the gains occurring in Reaches 10b-c and 11a. This information should be included in the FEIS.

32-52 Pages 4.14-44 to 45, Page 5-15 and Pages ES-21 and 29. Text Regarding Barrier Removal, Relationship to Proposed Project The FEIS should address whether the barrier removal program would proceed under with and without project conditions per the Fish and Game agreement or whether it is linked to the construction of the subject project. The FEIS should also discuss any need for or lack of diversion screening.

32-53 Pages 4.14-45 and ES-30. Text Regarding Relationship of Mitigation of Downtown and Upper Projects Many of the proposed mitigation measures, such as restoration of Reach 10b and the barrier removal on Alamitos Creek, have been recently proposed as well for the downtown project. Since the downtown project would precede the upper project, these areas would then become unavailable. Any distinction or overlap in the mitigation areas and measures should be stated for these two projects in the FEIS.

It appears that the proposed linear replacement ratio is about 2:1 (5,032 foot surplus), not 1:1 as implied in the text. The FEIS should clarify if this is to be dedicated to the subject project, or to the mitigation banking for future erosion repair discussed earlier on page 3-46. 32-53

Page 4.16-1 The first sentence in the first paragraph indicates that an archival search was conducted to identify documented cultural resources within the project area. However, neither the degree of research conducted in the review nor what archives were consulted. The FEIS should clarify the methods of the archival search and identify the archives reviewed. 32-54

The first paragraph generally states subsurface testing in the project area was conducted in 1990 and visual surface inspection was conducted in 1996. The National Park Service requests the protocols employed in these assessments be disclosed in the FEIS.

Page 4.16-3, Reach 6 For prehistoric archeological site CA-SCL-706, the DEIS states:

> "Due to the intense development it is impossible to determine at this time the extent and significance of the subsurface remains of the site. This prehistoric resource has undefined limits and the possible presence of human burials is uncertain." 32-55

The boundaries of this site need to be determined and documented in the FEIS. If the site is within the proposed work area, determinations of effect and significance need to be made in consultation with the SHPO.

Page 4.16-3, Reach 7 For site CA-SCL-690, "a large prehistoric village/cemetery site", the DEIS does not indicate the site location in relation to the proposal. In addition, a determination as to the presence of Native American remains at the site is needed and any values at risk treated appropriately in consultation with the SHPO. The California Native American Commission should also be contacted regarding the identification and repatriation of Native American burial remains. The FEIS should clarify the above points. If site CA-SCL-690 is within the proposal's impact area determinations of effect and significance need to be made in consultation with the SHPO. 32-56

Page 4.16-4, Reach 10 The FEIS should indicate whether historic site CA-SCL-635H is within the proposal's impact area. If CA-SCL-635H is within the proposal's impact area, determinations of effect and significance need to be made in consultation with the SHPO.

The California SHPO identification number (e.g. CA-SCL-635H) assigned to culturally and/or historically significant sites is not provided in the DEIS for the Valley View Packing Company site. The DEIS indicates the site is considered to be eligible for listing on the National Register under Criterion A. Also, the description of this site should consist of its size and location relative to the proposal, and the actual elements of the property. The potential project impacts to this site also need to be identified in the FEIS. 32-57

32-57 If consultation with the SHPO has not been initiated regarding the site's NHRP eligibility, such contact should be pursued and documented in the FEIS.

Finally, if the site is within the impact area then determinations of effect and significance need to be made in consultation with the SHPO, and stated in the FEIS.

32-58 Page 4.16-5. Reach 11 For prehistoric site CA-SCL-636, the DEIS states: "...widening of the east bank may have an effect on site CA-SCL-636". If it is within the impact area, determinations of effect and significance need to be made in consultation with the SHPO.

32-59 Page 5-12. Vegetation (First Paragraph) Reference to 3.3 percent of the Guadalupe River system total being hardbanked, is misleading. The FWS estimates about 27 percent of the project reaches have been hardbanked. The FEIS should state whether or not estimates include bridge crossings and abutments (not mentioned in text). At the least, the mainstem, non-tidal portions of the Guadalupe River should be evaluated and discussed separately from the tributaries (some of which is above dams) and tidal sloughs

32-60 Page 5-13. Table 5.4 Existing Habitats The categories in this table appear to be inconsistent with the description of vegetation in Chapter 4, in which it is stated that many of the trees are non-native. Table 5.4 should be revised in the FEIS.

32-61 Page 5-14. Fisheries Cumulative Impact, Streamside Vegetation The figures mentioned (3,959 feet overwater vegetation and 359 feet undercut bank losses) differ from higher numbers on p. 4.14-39 and Table 8-1 (5,096 and 1,720 feet, respectively). The FEIS should determine the error and make appropriate corrections.

The proposed project would result in potential temperature increases as well as redistribution of overstream vegetative shade. The FEIS should address whether the resulting impacts would be significant.

32-62 Page 6-1 and ES-31. Growth-inducing Impacts By providing flood protection to the abandoned orchard on the east bank of Reach 11a, the project could result in some impacts. This area has become established with young trees, both native and non-native. The project is linked to the construction of the 3-lane Pearl Road in this area. The FEIS should describe the intended future use for this area and modify the statements regarding lack of growth-inducing impacts.

32-63 Pages 8-15 to 21. Table 8-1: Mitigation and Monitoring In addition to the number of plants and other vegetative features to be measured, this should include tree and shrub height, cover, species composition, and (where appropriate) diameter. In addition, soil moisture/groundwater conditions should be measured in mitigation areas.

Thank you for the opportunity to comment on this project.

Sincerely

Patricia S. Port

Patricia Sanderson Port
Regional Environmental Officer

cc:
Director, OEPC, with original incoming
Regional Director, FWS, Portland
Regional Director, NPS, Pacific West Region

COMMENT LETTER 101

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Sacramento Field Office
3310 El Camino Avenue, Suite 130
Sacramento, California 95821-6340

IN REPLY REFER TO:

PN 17776S

May 2, 1997

District Engineer
Corps of Engineers, San Francisco District
Attn: Regulatory Functions Branch (Bob Smith)
333 Market Street
San Francisco, California 94105-2197

Subject: Public Notice 17776S, "Santa Clara Valley Water District, Upper Guadalupe River Flood Control Project, San Jose, Santa Clara County, California

Dear Colonel:

The U.S. Fish and Wildlife Service (Service) has reviewed Public Notice 17776S (PN), dated March 24, 1997, regarding a proposal to construct a flood control project on the upper Guadalupe River. These comments have been prepared under the authority, and in accordance with the provisions, of the Fish and Wildlife Coordination Act.

SERVICE POLICY

When reviewing U.S.. Army Corps of Engineers (Corps) public notices, the objectives of the Service are: "Ensuring that all authorized works, structures, and activities are (1) judged to be the least ecologically damaging alternative or combination of alternatives (e.g., all appropriate means have been adopted to minimize environmental losses and degradations) and (2) in the public's interest in safeguarding the environment from loss and degradation." (Federal Register, Vol. 40, No. 231, December 1, 1975). For impacts to wetlands and aquatic habitats, the Service's goal is no net loss of in-kind habitat values or acreage. 101-1

PROJECT DESCRIPTION

The project includes an array of floodway excavation, bypass, erosion protection, ramp, gabions, cribwall, bridge, and access elements on 6.4 miles of the river. Most of the project is potentially subject to a Federal cost-share, and has been evaluated in similar form in a recently completed Fish and Wildlife Coordination Act (FWCA) report by our staff.

SITE DESCRIPTION AND NATURAL RESOURCES

Within the urban environment of San Jose, the Guadalupe River and associated riparian corridor system have been substantially impacted by floodplain encroachment and various bank protection projects, yet the river corridor remains the basis for a diverse wildlife and fishery resource, including small runs of chinook salmon and steelhead trout. These species of fish and wildlife persist by virtue of high value near-stream habitat: elements such as large trees, overwater shade vegetation, and in-water structure (exposed roots, undercut banks). Temperature model studies as part of the "downtown" (lower) Guadalupe River Flood Control Project demonstrate the conditions to be marginally suitable for anadromous fish reproduction. The quality of vegetation varies, being generally higher in Reaches 6-10a, and lower in upper reaches. The vegetation can be considered of moderate age (about 30 years), and consists of both native trees (cottonwoods, willows, live oaks), as well as non-native species like black locust, with a moderately-dense shrub understory. A significant but not fully censused fraction of the river bank has already been hardened by roadway, erosion, or past flood control projects.

SPECIAL STATUS SPECIES

The project is within the range of the federally threatened California red-legged frog (*Rana aurora draytonii*) and the species has been documented within 5 miles of the project area in the upper Guadalupe River watershed. The Service is currently in informal consultation with the Sacramento Corps District for a flood control project downstream of the project site, which may affect the California red-legged frog. Suitable habitat for the species is present within the project area, and the species may likely use this reach for foraging and dispersal. The public notice does not address direct, indirect, and cumulative impacts of the project on California red-legged frogs, nor propose mitigation for potential adverse impacts to the species. The Service has determined this project may affect the California red-legged frog and recommends the Corps initiate consultation under section 7 of the Endangered Species Act of 1973, as amended.

101-1

PROJECT IMPACTS AND MITIGATION

The major elements that would impact resources consist of a bypass around Reaches 6-8, floodway clearing, excavation and widening in most of Reaches 9 and 11a (portions with partial bypasses) and all of Reaches 10a and 11b-c; capacity in Reach 10b is sufficient. Other levee or floodwall, and channel lining or widening elements (i.e., on Ross and Canoas Creeks and Reaches A and 12) would have lesser, but still significant, impacts. Significant losses of water edge riparian vegetation would occur in proportion to the extent of bank disturbance and conversion. In the bypassed reaches, avoidance is limited to gabion-lined portions of the entrances and exits only; in some places it is possible that maintenance would be reduced and the vegetation width increased by planting of the bypass islands.

The mitigation consists of a combination of "infill" planting of ruderal areas, river edge plantings, and plantings away from the river and, sometimes, at higher elevation. This will result in some redistribution of riparian cover, changes in species composition and in habitat benefits. Impacted vegetation consists of both native and non-native trees, largely at low elevations with respect to the channel invert, and most significantly in Reaches 9 and 10a (and to lesser extent in other hard scape features in other reaches). Mitigation, using native species only, will promote vegetation on degraded reaches (10b, 12, portions of 11a); and include some vegetation at the invert level, as well as more xeric species at higher elevations.

COMMENTS

101-2 In our latest FWCA report (USFWS 1997), the Service acknowledged the need to maintain and enhance the Guadalupe River and its riparian corridor. In our report, we recommended more comprehensive application of bypass floodway options be used, as well as minimization of hard scape in the form of ramps, erosion protection, and biotechnical features. We identified key data needs regarding present and projected vegetation and corridor parameters, as well as information pertaining to the mitigation sites on soil and water availability. We further recommended that a mitigation and monitoring plan be developed, incorporating key habitat quality features, that would be a legally binding responsibility of the applicant to maintain in perpetuity.

101-3 The applicant should be complimented to the extent that our past recommendations (USFWS 1993) to raise bench cuts, utilize bypass options, restore a low flow channel, and remove barriers, have all been incorporated to a varying degree into the project. However, in some important reaches, there are still significant concerns about the narrowing of the vegetation corridor, displacement of riparian vegetation away from the stream, vegetation restrictions owing to floodway creation next to the river, and cumulative impacts. The project includes areas with one-sided clearing, or exceedingly narrow riparian width and height. In order to achieve the goal of flood control compatible with a functional riparian corridor on the main river, there will need to be more available floodway width. This will unfortunately encroach upon a few already developed roadways and other properties, but we believe it is possible to do so in a manner which is compatible with urban needs of Santa Clara County. We strongly disagree that development preceding appropriate flood control in any way justifies further degradation of environmental resources. The highly modified creeks, Ross and Canoas, would be further degraded. Ross Creek in particular has herbaceous wetlands in the affected reaches which would be permanently impacted and mitigated for off-site. 101-3

Impacts to aquatic resources are not as well known, and we are concerned about the potential for successful mitigation. No information substantiating the implied suitability of the upper creek areas for salmonids is available in the PN or Draft Environmental Impact Statement (DEIS); Guadalupe Creek may be suitable, but Alamitos Creek may or may not be, contingent upon temperatures, flow, and possibly contaminants. The effect of removal of shade and wetland vegetation along the main river and creeks on water temperature has not been investigated. 101-4

In the overall evaluation of the applicant's project, uncertainties are apparent regarding the potential for mitigation success, the equivalence of impact and mitigation habitat in terms of vegetation and corridor value, and the physical stability of some project features. Underscoring this concern is our observation of less than fully successful mitigation and excessive erosion in recently constructed features of the contiguous lower Guadalupe River Flood Control Project. 101-5

The PN and attendant Draft Environmental Impact Statement (SCVWD 1997) do not fully address these concerns. The belief that environmental impacts will be mitigated in full is predicated largely on the intent to construct those reaches with maximum avoidance (Reaches 6-8) and mitigation areas (Reaches 10b-12) early in the 25-year construction period. 101-6

RECOMMENDATIONS

We recommend the Corps deny a permit to construct the project in its present form. At this juncture, the Service would be more amenable to consider a permit for those reaches with maximum avoidance (Reaches 6-8) and mitigation areas (Reaches 10b-12), and separably consider another permit for the remaining areas following a re-evaluation of all potential flood control options, and the success of the mitigation areas. 101-7

However, should a permit be issued for the entire project, we recommend the following conditions be attached, consistent with our latest FWCA report and comments on the DEIS:

1. *The applicant shall provide a full assessment of cumulative impacts, as follows: (a) determine the total of all existing hardbank structures in the project reaches, and the additional hardbanking that would occur with the proposed project, and (b) determine the impacts of the subject project on stream temperature, in combination with other recent and proposed projects, and demonstrate any adverse thermal impacts be mitigated in full.* 101-8

The PN provides independent lengths of various kinds of hardbanking elements (gabions, rock weirs, biotechnical protection with boulders) and general

101-8 information on riparian impact acreage from other anticipated major projects. However, this river system has already been impacted by large past projects in some reaches (e.g., 10b), and numerous smaller bank repairs and bridge crossings elsewhere. Taken together, these hardbanking features have irretrievably reduced the potential for vegetation in the project area and downstream. An accurate accounting of hard scape conditions at present, and those proposed with the project, needs to be provided.

2. For channel widening elements with a natural bank edge with unlimited vegetation, the applicant shall provide an engineering analysis of the water velocities to be experienced on the bank slope edge (up to the design flood), demonstrating that significant bank erosion would not occur; the analysis shall take into account soil integrity at the specific sites, and consider conditions with vegetation, and immediately following replanting of mitigation vegetation.

101-9 The portions of the project that are of concern are those reaches (portions of 9 and 10a), which would have relatively thin riparian corridors (10 feet in width) adjacent to cribwall-lined floodways of a bench height of about 5-6 feet. The intention of these high banks is to preserve some trees and allow establishment of near- and over-stream shade trees. Presently, these areas do exhibit erosion which is partially reduced by rubble or other more complete hardbanking. Although it is desirable to remove the rubble, the apparent soft, loamy texture of the soils, and past channel incision, suggests that such areas are subject to extensive, and rapid, erosion prior to and possibly after full vegetation establishment. The Service has observed such erosion in mitigation areas with relatively low design velocities in Contracts I and II of the separate, downtown project. Since the revegetation areas are much more limited and the floodway constrained in the upper project, the applicant should ensure that these revegetation areas will be physically stable.

3. The applicant shall commit to limit maintenance of vegetation in the 25-foot corridor centered on the low-flow channel so as to meet or exceed Shaded Riverine Aquatic (SRA) cover goals, specifically (a) No pruning in this corridor shall be permitted where overstream shade falls below 50 percent, nor where such pruning would reduce such shade below 50 percent, (b) in no case shall pruning be permitted at a height more than 10 feet above Ordinary High Water (OHW).

101-10 Although the applicant has stated that maintenance would be "modified to include less...vegetation control", applicant also states that such vegetation would be removed in the above-mentioned corridor. Such removal is in conflict with the applicant's assertion that SRA would be mitigated 1:1 on a lineal basis. These trees do impart beneficial attributes to the wetland under Corps jurisdiction, in terms of temperature moderation, escape cover, and insect drop for resident and anadromous fish, as perches to avian wildlife which utilize jurisdictional wetland as forage, and as natural stabilizers of the bank against erosion. Thus the Service contends it is legitimate to impose a condition for the interfacial portions of the riparian zone in order to protect the jurisdictional areas.

The Service concurs with the 50-75 percent optimum shade goal stated by the applicant. Currently, major branches are pruned when protruding over the river, thus limiting SRA to around 1/3 of this optimum.

101-11 *4. To ensure success of wetland and associated riparian habitats and species in Reach 10b, the applicant shall (a) evaluate existing soils, groundwater, and groundwater fluctuation with respect to year-to-year variation in basin precipitation (b) submit appropriate hydrologic criteria necessary for vegetation survival and growth goals (i.e., for marsh--hydroperiod, for riparian habitats--depth of groundwater and upper soil moisture), (c) commit to providing water through releases past stream gage 23b in order to meet stated goals.*

Riparian and jurisdictional wetland losses occur throughout the project, often in areas of permanent or semipermanent waters of the invert around which are moist soils supporting river edge riparian tree species like cottonwood. In contrast, Reach 10b is immediately downstream of the percolation area yet upstream of urban accretions. It appears that the area is much drier and may not support riparian vegetation or wetlands over the long term in the absence of an assured water supply. Aquatic values of such wetlands is undeniably a function of the persistence of water and, in reply to a Service inquiry regarding passage flow maintenance, indicated that no instream flows would be supplied for environmental purposes. Further, the maintenance and monitoring plan (Table 8-1 in SCVWD 1997) prescribes only 5 years of monitoring; this is a typical irrigation period beyond which the area would be subject to existing and possibly lethal conditions. 101-11

5. *The Corps shall initiate section 7 consultation with the Fish and Wildlife Service regarding impacts to the red-legged frog and incorporate the resulting special conditions in any permit issued for the project.*

The applicant has not conducted surveys with Service-approved protocols for this species, and the referenced study is 10 years old. Applicant's comments regarding absence from the project area are not substantiated. Service files indicate nearby records on Alamitos, Guadalupe, and Los Gatos Creeks. In the absence of surveys, presence of this species is assumed in the project area and, under this assumption, the applicant is subject to non-discretionary terms and conditions of a Biological Opinion to be decided by the Service pursuant to conference/consultation under the Endangered Species Act. 101-12

6. *In cooperation with the Corps of Engineers, San Francisco and Sacramento Districts, the applicant shall research past mitigation efforts in the project area, and ensure that proposed mitigation areas do not in any way overlap those of any other past or proposed project.*

Two concerns are related to this condition. First, there has been anecdotal reference to Reach 10b that plantings have been attempted there previously and that such revegetation had failed. Not only does this justify implementation of condition #4 above, but if dedicated as a mitigation site for a past project(s), it should be excluded from use for this PN. Second, several of the mitigation measures, including Reach 10b and barrier removal, have been proposed in a final Habitat Evaluation Procedures (HEP) document for the lower (downtown) project under the auspices of the Sacramento District Corps office. 101-13

7. *The applicant shall mitigate for interrelated and interdependent losses of riparian and SRA habitat to meet the following minimum replacement goals: (a) no less than full replacement of habitat value, as determined by HEP, (b) no net loss of in-kind wetland acreage, (c) no net loss of habitat corridor parameters (i.e., length of interface contact of riparian with stream edge, contact length of overhead cover, overhead cover by trees exceeding 30 feet in height or 15 cm diameter at breast height, area of large trees exceeding 30 feet in height or 15 cm diameter within 10 feet of the water edge, area of riparian habitat within 100 feet of the low-flow channel, area of riparian habitat within 10 feet of the invert elevation).*

101-14

The impact of the project on riparian cover is inseparably linked to jurisdictional areas. Although not as yet fully quantified, the revegetation plan indicated in the PN and attendant DSIS suggest xeric and lower growth form species which provide different habitat qualities from those lost. In addition, the displacement of vegetation away from or above the channel invert reduces the interfacial values provided by a river corridor and possibly affects growth of such mitigation. We have developed the above criteria to ensure that existing conditions, impacts, and mitigation areas, are documented in a fashion which will fully offset values and acreage in a manner which replaces or enhances the river corridor. In our FWCA report (USFWS 1997), analyses suggested that SRA cover values would not be replaced in full, even with optimistic projections for overhead cover in Reach 10b.

8. The applicant shall develop a comprehensive mitigation and monitoring plan to ensure that habitat replacement goals are achieved, including key characteristics of riparian cover and overstream vegetative shade, soil moisture, streamflow, hydroperiod, bank erosion, and water temperature, with agreement from the Fish and Wildlife Service and Department of Fish and Game on parameters and monitoring protocols. The plan shall include specific remedial actions and timetables in the event of mitigation failures, and such actions shall become a legally-binding responsibility of the local sponsor. Monitoring shall continue annually for 5 years, and at intervals to be agreed with resource agencies, for a minimum period of 30 years.

101-15 This condition provides assurance that the goals stated in conditions #4 and #7 are coordinated with resource agencies, monitored, and appropriate corrective actions in place for anticipated problems. The DEIS discusses a 5-year monitoring period, however, many of the variables assumed in the Service's HEP would take much longer to achieve. More importantly, the initial 5 years is a period in which vegetation is watered, and is too short of a time frame to assess persistence of mitigation sites in the face of drought, design flood events, or other stressors. Thus, a 30-year period is recommended as a condition, which is the estimated median age of the riparian cover of the project area.

9. The applicant shall, prior to construction, conduct an updated survey of all wetland and riparian cover-types, and on such basis, adjust the impact and mitigation required for the project, to be deducted from the proposed mitigation bank.

101-16 The acreage figures reported are based on mid-1980's surveys which may not accurately reflect impacts at present. The DEIS (SCVWD 1997, plate volume II) states that the figures are for October 1984 aerial dimensions, not Ordinary High Water (OHW). The OHW mark should be determined and wetland acreage adjusted accordingly. Some areas marked as scrub-shrub appeared during Service HEP work to be riparian. Riparian areas should also be corrected for slope. The Service cannot concur with the wetland delineation, as the enclosures in attachment 1 of Appendix D of SCVWD (1997, vol II) were not included. We are especially interested in how these figures may have compared with earlier studies.

10. The applicant shall, prior to construction, prepare a comprehensive fishery management plan that provides adequate assurances of passage to and from proposed mitigation sites.

101-17 The upstream creeks are historical spawning areas of steelhead trout. Despite removal of the barriers proposed in the PN, additional issues are unresolved. At present, most fish spawn in the lower reaches, apparently due to flow and depth conditions. If the fish remain in these areas following construction of the project due to these habitat cues, the mitigation areas may be underutilized. Further, the passage measures proposed may only be functional during a limited range of flows. To provide adequate use of the mitigation areas, controlled releases may be necessary to ensure attraction and passage to the mitigation sites. The plan should also address the issue of Almaden Lake, interposed between the creeks and main river, to the extent it may act as a heat sink that would be avoided by anadromous fish.

11. The applicant shall conduct work in or affecting the channel invert between May 1 and October 15, and before June 1 only when average daily water temperatures have exceeded 68°F for three consecutive days and no juvenile salmonids have been present in the project reaches for at least seven days preceding the proposed construction.

101-18 This more restrictive and specific condition than suggested by the applicant ensures that salmonid outmigration will have been completed prior to in-water impacts.

If you have any questions about these comments, please contact Dr. Steve Schoenberg (Corps Branch) at (916) 979-2107 or Meri Moore (Endangered Species Division) at (916) 979-2752. 101-18

Sincerely,

Wayne S. White
Field Supervisor
U.S. Department of the
Interior Coordinator

cc: ABS-Portland, OR
EPA, San Francisco (R. Tuden)
Reg. Dir., CDFG, Sacramento
Reg. Mgr., CDFG, (Region III, Yountville)
NMFS, Santa Rosa (Ian Gilroy)
Applicant - Santa Clara Valley Water District

REFERENCES

Santa Clara Valley Water District (SCVWD). 1997. Draft Environmental Impact Report/Statement: Upper Guadalupe River Flood Control Project. ~1,500 pp (3 volumes).

United States Fish and Wildlife Service (USFWS). 1993. Draft Coordination Act Report: Upper Guadalupe River Flood Control Project. Sacramento Field Office. 103 pp+Appendices.

United States Fish and Wildlife Service (USFWS). 1997. Revised Draft Coordination Act Report: Upper Guadalupe River Flood Control Project. Sacramento Field Office. 29 pp+Appendices.

ORIGINAL DOCUMENT IN FILES

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

MAY 0 1 1997

Lt. Col. Richard G. Thompson, District Engineer
U.S. Army Corps of Engineers, San Francisco District
333 Market Street, 8th Floor
San Francisco, CA 94105-2197

Attention: Bob Smith

RE: Public Notice (PN) 17776S, dated March 24, 1997, Santa Clara Valley Water District, Upper Guadalupe River Flood Control Project, City of San Jose, Santa Clara County, California.

Dear Colonel Thompson:

The U.S. Environmental Protection Agency (EPA) has reviewed PN 17776S, dated March 24, 1997, regarding the Santa Clara Valley Water District's (applicant) proposal to construct the Upper Guadalupe River Flood Control Project in the City of San Jose, Santa Clara County, California. The following comments have been prepared under the authority of and in accordance with the provisions of the Federal Guidelines (Guidelines) promulgated under Section 404 (b)(1) of the Clean Water Act. EPA also provided comments on the Draft Environmental Impact Statement/Report (DEIS/R) for this project (letter to Corps dated April 18, 1997, attached). Due to confusion in the distribution of the PN for this project, Bob Smith of your staff granted an extension of the comment period until May 3, 1997.

102-1

Project Description

The Santa Clara Valley Water District (SCVWD) proposes to construct flood control facilities along the upper Guadalupe River and portions of its tributaries (Ross and Canoas Creeks) to provide protection against the 100-year flood. The project includes an array of flood control structures including levees, floodway excavation, bypass channels, bank protection as well as channel maintenance activities such as ramps, cribwalls and bridges. The proposed project covers a total channel distance of approximately 9.0 miles and entails over 8,110 cubic yards of fill. This project potentially involves federal cost-sharing and has an estimated construction schedule of 25 years.

102-1 The project would impact approximately 1.85 acres of wetlands and 10.16 acres of waters of the United States. Although the San Jose area is highly urbanized, the Guadalupe River and associated riparian corridor offers diverse wildlife and fishery resources. The vegetation consists of mature trees (30 years) such as cottonwoods, willows, and live-oaks with a well-established shrub under story and some non-native species. The River also supports small runs of chinook salmon and steelhead trout as well as other fish species. The mitigation for the project consists of a mixture of re-vegetating and "in-filling" the River banks with native vegetation as well as improving fish passage along the River.

EPA has the following comments and concerns about the proposed project:

Avoidance: We would like to compliment the SCVWD for designing a flood control project that attempts to avoid impacts to waters of the U.S. We also understand that the applicant applied hydrogeomorphological principles to the design of the flood control project including design of a low flow channel, estimation of "bankfull" discharge, and riffle-pool measurements.

102-2 However, we are concerned that the current design still includes substantial narrowing of the channel and its riparian and vegetation corridor. In particular, there are a number of sites where the existing roadways and adjacent development restricted the available width of the channel. In these instances, the design includes clearing an entire side of the bank and replacing it with steep rock-lined embankments. This design will result in a substantial loss of riverine functions including diversity of the habitat and vegetative communities, habitat connectivity, macro- and micro-complexity of the flood plain and energy dissipation. Such a design often leads to increases in the velocity and power of the water during flood flows and may result in a decrease in flood capacity. In addition, Ross and Canoas Creeks are to be highly modified with concrete drop structures and a resulting permanent degradation of functions.

We strongly recommend that the SCVWD consider the long-term costs of such a design. More importantly, the document and the DEIS/R failed to demonstrate that it is not practicable to realign adjacent roadways and avoid the associated impacts. For Ross and Canoas Creek, we recommend that the applicant consider "softer" methods and avoid the vegetation impacts. The Guidelines prohibit the discharge of dredged or fill material unless appropriate and practicable steps have been taken that will minimize potential adverse impacts of the discharge on the ecosystem (40 CFR 230.10 (d)).

102-3 **Assessment of Impacts**: We are concerned that the PN (and accompanying DEIS/R) lacks an adequate assessment of the direct, secondary, and cumulative impacts associated with this project. Please see our comment letter on the DEIS/R regarding armoring of banks at the bypass inlet and outlet structures and changes in flow velocity, sediment distribution, and deep water habitat. In addition, the removal of riparian vegetation will create a significant modification to shading and changes in water temperature and dissolved oxygen with resulting degradation of fishery habitat. 102-3

It also appears that there are significant uncertainties regarding the cumulative impacts associated with this project. The proposed changes in channel width, inlet and outlet structures and modifications to vegetation on the bank and their effects on the stability of the channel are unclear. Given the soil type and the history of bank erosion and down cutting in the separate, downtown flood control project, it is likely that additional bank protection activities can be expected in the project vicinity. As we have commented on other SCVWD maintenance projects, an increase in hard scape bank protections are an irretrievable reduction in habitat and vegetation in the project area. An accurate assessment and accounting of the bank protection methods is needed. 102-4

These additional indirect impacts need to be quantified and described in order for us to fully evaluate the secondary effects of the project on the aquatic ecosystem (40 CFR 230.11(h)). Until all project-related impacts are clearly quantified and described, we can not fully evaluate the effects of the proposed project on the aquatic ecosystem and are unable to make a reasonable judgement as to whether the proposed project complies with the Guidelines (40 CFR 230.12). 102-5

Mitigation: We are also concerned about the potential for successful mitigation. First, the mitigation in the lower Guadalupe River Flood Control Project has been less than fully successful. In addition, the DEIS/R states that more than one impact can be mitigated by a single mitigation measure (1-6). This suggests that the planting of a willow cutting can suffice for shaded riverine habitat, riparian forest, and Heritage tree mitigation. These impact measures need to be independent of each other. Also, some of the mitigation measures are necessarily delayed until the end of the 25-year construction project. This results in a temporal loss of habitat and increases the uncertainty about the outcome of the mitigation. Lastly, given the cumulative loss of riparian forest in the Bay Area and the project's substantial impacts to the riparian corridor of the Guadalupe River, the proposed mitigation ratio of 1:1 is inadequate. 102-6

Furthermore, the applicant has not prepared a mitigation and monitoring plan for review and approval by the resource agencies. It is our conclusion that the mitigation, as currently proposed, is inadequate to fully offset unavoidable impacts to the aquatic ecosystem (40 CFR 230.10 (d)). 102-7

Recommendation

Our overall evaluation of the applicant's project is as follows: it lacks an adequate demonstration that increased avoidance is not practicable; there are 102-8

102-8 uncertainties and gaps in the direct, indirect, and cumulative impacts analysis and; the mitigation does not adequately offset the unavoidable impacts. The flood control project represents a monumental change to the physical and biological characteristics of the Guadalupe's riverine ecosystem. While we recognize the importance of this flood control project, we can not endorse such a sweeping change to the riverine system without more certainty surrounding the likely impacts, practicability of avoidance, and mitigation - particularly over a 25-year life-span.

102-9 Therefore, we are recommending denial of this permit. However, as an alternative to permit denial, we concur with the conditions and comments offered by the U.S. Fish and Wildlife Service and would consider permitting of this project in phases, following a re-evaluation of flood control options and more appropriate mitigation. We would be happy to work with the Corps and the SCVWD to better address these issues and make progress on this project.

If you have any questions or concerns regarding this project please contact Rebecca Tuden of my staff at (415) 744-1987.

Sincerely,

Daniel Meer

Daniel Meer, Chief
Office of Clean Water Act Compliance

cc:
applicant
RWQCB, Oakland
USFWS, Sacramento, Davis
CA DFG, Yountville
SWRCB, Balaguer

COMMENT LETTER 103

ATTENTION: LIEUTENANT COL. RICHARD G. THOMPSON, DISTRICT ENGINEER
US ARMY CORPS OF ENGINEERS
REGULATORY BRANCH
SAN FRANCISCO, CA

FAX: (415) 977-8403

DATE: APRIL 23, 1997

FROM: DONNA BERNARDI
FRIENDS OF THE GUADALUPE

FAX: (408) 268-9401

TOTAL PAGES INCLUDING THIS PAGE:

SUBJECT: PUBLIC NOTICE NUMBER 17776S DATED 24 MARCH 1997.
COMMENTS ON APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT FOR THE UPPER GUADALUPE RIVER FLOOD CONTROL PROJECT IN THE CITY OF SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA; PROCESSED PURSUANT TO THE PROVISION OF SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344).

Friends of the Guadalupe
"The Silicon Valley Chapter of Urban Creeks Council"
1228 Harriet Avenue Campbell, CA 95008
(408) 374-0556 Phone - (408) 378-1383 Fax

COMMENT LETTER 103

April 23, 1997

Lt. Col. Richard G. Thompson
District Engineer
Regulatory Branch
U.S. Army Corps of Engineers
333 Market Street
San Francisco, CA 94105-2197

Subject: Public Notice 17776S. Santa Clara Valley Water District Application for a Permit Pursuant to provisions of Section 404 of the Clean Water Act (33 U.S. C. 1344).

Dear Lt. Col. Thompson:

Our Chapter has reviewed Public Notice No. 17776S and request that the Santa Clara Valley Water District (SCVWD) be denied a Section 404 permit for the Upper Guadalupe River Flood Control Project at this time.

The SCVWD DEIR/EIS comment period close on April 18, 1997. There has not been time for an analysis on these comments, let alone a response. We believe the EIR/EIS needs to be approved before a permit is given. We have asked the SCVWD for an analysis on the Stream Restoration Alternative. There may be an assumption on the SCVWD's part that the Preferred Project Alternative will be selected, but the final selection has not been determined at this time. 103-1

We and other organizations believe the Stream Restoration Alternative is the geomorphologically superior design, and would offer citizens a less expensive project over time. Cost of the project and "regulatory uncertainty" were given as reasons for rejection. However, the Streams Restoration Alternative would comply with broad regulatory mandates, improving water quality as well as allowing new vegetation to establish over time. This new vegetation would reduce long-term impacts. "Regulatory uncertainty" exists in all permitting project situations, and therefore should not have eliminated a superior environmental design. We felt the reasons for rejecting this alternative were not compelling. We are therefore waiting for the final comments and review on this proposal.

103-2 The DEIR/EIS fails to address the cumulative impacts this project has on the river. It fails to address the real cost of maintenance and increased herbicide use. It fails to address the wild and

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2. Friends of the Guadalupe, Comments Cont'd.

aquatic resources, such as steelhead trout and chinook salmon habitat. The habitat needs to be kept viable until the projects end. Viable steelhead trout and chinook salmon habitat needs have not been addressed. The steelhead trout will be listed soon as threatened. The issue of SRA loss (Shaded Riverine Aquatic) has not been addressed, except to say a mitigation bank will be established. It does not address where. 103-2

The mitigation of the Downtown and the Lower Guadalupe River Flood Control Projects are failing. Severe erosion and sedimentation in overflow channels is reducing the water carrying capacity of the channels and the river; thus, low flow fish channels are filling in and are out of compliance. Riparian mitigation has failed and has not been replanted. **No new 404 permits should be issued until the Downtown and Lower Guadalupe River Flood Control Projects are brought into compliance with their permits.** 103-3

Because the project won't be completed until 2023, we believe the EIR/EIS should stipulate that the Integrated Vegetation Mitigation Plan, the Guadalupe Fisheries Management Plan, The Vegetation Plan for Riparian and Urban Forests are complete and have received approval from the SFRWQCB, the CDFG, the USFWS, and NMFS. **We believe no new 404 permits should be issued until these plans are complete and have received approval.** 103-4

The U.S.A.C.E's preliminary environmental assessment seems to be outdated. Chinook and steelhead trout use the river system. Southwestern pond turtles have been observed. Dr. D. Holland, has stated that turtle habitat existed in the Downtown reaches of the Flood Control Project, Contract 1, 2, and reach A. There are photographs of these turtles. The U.S.A.C.E's stated they did not consider these turtles when they removed the Contract 1 and 2 western bank vegetation. 103-5

The SCVWD is currently acting in unlawful violation of Section 5901 of the Fish & Game Code. The SCVWD is proposing to remove fish barriers as mitigation "to provide quality habitat". It is inappropriate for the SCVWD to claim performance of an existing legal duty as a mitigation measure for the proposed project. Additionally,Mitigation Measure CF-1 is already part of the SRA Mitigation package for the Downtown Project, (fish passage at the gabion structure on Alamitos Creek upstream of Mazzone drive). 103-6

We will be sending you a hard copy of our comments via US mail.

Sincerely,

Donna Bernardi

Donna Bernardi

cc. James Bybee, NMFS
Steve Shoenburg, USFWS
Keith Anderson, DF&G

Tom Mumley, RWQCB
Larry Johmann, WWCC
Roger Castillo, Silichip Chinook

COMMENT LETTER 104

STATE OF CALIFORNIA - THE RESOURCES AGENCY
PETE WILSON, Governor

DEPARTMENT OF FISH AND GAME
POST OFFICE BOX 47
YOUNTVILLE, CALIFORNIA 94599
(707) 944-5500

April 23, 1997

① Regulatory
CAL Fong

Lt. Colonel Richard G. Thompson
District Engineer
U. S. Army Corps of Engineers
333 Market Street, Suite 812
San Francisco, California 94105

Attention Regulatory Branch

Dear Col. Thompson:

Upper Guadalupe River Flood Control Project
Santa Clara Valley Water District
Public Notice No. 17776S

Department of Fish and Game personnel have reviewed the Public Notice for the above-named project. The project consists of channel modifications along 8 reaches of the Guadalupe River, covering about 6.4 miles, in the city of San Jose, Santa Clara County

Pursuant to the California Environmental Quality Act process, the Department provided comments on the Draft Environmental Impact Report/Environmental Impact Statement for this project to the Santa Clara Valley Water District by letter dated April 17, 1997. A copy of this letter is enclosed, and we request that it be identified by reference as our detailed response to subject Public Notice. 104-1

If you have any questions regarding our enclosed letter of comment, please contact Margaret Roper, Fishery Biologist, at (408) 842-8917; or Carl Wilcox, Environmental Services Supervisor, at (707) 944-5525.

Sincerely,

Brian Hunter

Brian Hunter
Regional Manager
Region 3

Enclosure

cc: Ms. Loretta K. Barsamian (w/enclosure)
Executive Officer
California Regional Water Quality
Control Board
San Francisco District
2101 Webster Street, Suite 500
Oakland, California 94612

Department of Fish and Game

Ms. Margaret Roper

ATTENTION: LIEUTENANT COL. RICHARD G. THOMPSON, DISTRICT ENGINEER
US ARMY CORPS OF ENGINEERS
REGULATORY BRANCH
SAN FRANCISCO, CA

FAX: (415) 977-8403

DATE: APRIL 23, 1997

FROM: NANCY BERNARDI, DIRECTOR
GUADALUPE-COYOTE RESCOURCE CONSERVATION DISTRICT

FAX: (408) 993-8728

TOTAL PAGES INCLUDING THIS PAGE: 6

SUBJECT: PUBLIC NOTICE NUMBER 17776S DATED 24 MARCH 1997. COMMENTS ON APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT FOR THE UPPER GUADALUPE RIVER FLOOD CONTROL PROJECT IN THE CITY OF SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA; PROCESSED PURSUANT TO THE PROVISION OF SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344).

COMMENT LETTER 105

GUADALUPE - COYOTE
RESOURCE CONSERVATION DISTRICT
888 NORTH FIRST STREET RM. 204, SAN JOSE, CA 95112
OFFICE (408) 288-5888 FAX (408) 993-8728

April 21, 1997

Lt. Col. Richard G. Thompson, District Engineer
U.S. Army Corps of Engineer
Attention: Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

SUBJECT: **Public Notice Number 17776S dated 24 March 1997. Application for a Department of the Army permit for the Upper Guadalupe River Flood Control Project in the City of San Jose, Santa Clara County, California; processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).**

Dear Lieutenant Col. Thompson;

105-1 Thank you for the opportunity to comment on the Santa Clara Valley Water District's (the District) application for a Department of the Army Section 404 permit for the Upper Guadalupe River Flood Control Project in the City of San Jose, Santa Clara County, California.

2. Project Description

You have stated that the "average annual long-term cost of flood damage is estimated at $20.6 million". What is "long-term"? Additionally, there is no clear explanation in the DEIR/EIS on which items are included in the "long-term" cost. Could you provide us with the breakdown on the figures?

105-2 In the Santa Clara Valley Water District's DEIR/EIS under No Project Alternative (p. 3-54), the flood damage is stated to be approximately $280 million. This figure includes "annual flood damage, erosion repair, emergency maintenance, flood insurance and flood proofing of new development (Santa Clara Valley Water District 1977)". Could you provide us with the breakdown on the figures? **Why are flood insurance and flood proofing of new development included in the figures of flood damage?** What are the estimated costs of flood damages of erosion repair and emergency maintenance (separate from flood insurance and flood proofing of new development) in the project area, and over what period of time?

105-3 The Santa Clara Valley Water District has an existing maintenance program which includes selected vegetation removal and ongoing erosion repair projects "where the District has right-of way and access to those sites". The costs involved in this project are not clear. Are the maintenance costs separated out from the $280 million cited in the DEIR/EIS ? Are these costs included in the "annual long-term estimate of $20.6 million"?

2. Upper Guadalupe River Comments Cont'd. April 21, 1997

You state that "During the 30-year period of a typical home loan, the chance that a one-percent flood will occur, or will be exceeded, approaches 30 percent." This is an incorrect description of probability. A one percent chance (probability of .01) is the same thing as 1 chance in 100. To say that the probability approaches 30% (towards the end of a 30-year home loan) would be to say that the probability of a flood in year 30 would be 30 chances in 100. This is not the case. In year 30, the chance of a flood is the same as in year one -1 chance in 100. Moreover, if probability were cumulative (it is not cumulative), the correct probability would be 1 chance in 71, not 30 chances in 100. 105-4

It is stated that maintenance procedures will be reduced under the Preferred Project. This is an impossibility. There will be 18' wide roads to maintain as well as vertical walls. Ramps will be constructed which extend down to the channel (some made of concrete). These extensive surfaces will increase herbicide use. Additionally, new bypass channels will require sediment removal on a frequent basis as well as vegetative control. An estimated annual loss of 80' feet of SRA vegetation will occur because of bank erosion. Vegetation at these sites will be replaced by hardscape methods requiring more chemical control, not less. "The channel will be widened and benched, with portions of the channel lined with gabions"; all of these areas will be managed for vegetative control and sediment removal. Please discuss how the increased road, ramp and bypass surfaces will lessen vegetative control and decrease sediment removal. 105-5

Reach 9, 10A, 11B, C, and 12

Increased vegetative removal over the life of the project will result in higher water temperatures, impacting anadromous fish. In reaches 9, 10A, 11 B and C, the removal of riparian vegetation almost up to adjacent roadways, plus the addition of maintenance roads within the project area will allow runoff pollution to enter the river with little or no vegetative filtration. This is unaddressed in the DEIR and is a significant environmental impact. The herbicides to be used, and the environmental impacts of those herbicides, are unaddressed. Further, reach 11 shows a widened channel with no defined low flow corridor. 105-6

The project design for Reach 12 will cause water temperatures to reach unacceptable and critical levels for salmonids most of the year. Shade cover removal and channel widening will result in increased solar exposure. 75 years after project construction, the Preferred Project Alternative continues to show the river channel to be absent shade cover. 105-7

Overflow Channels

Overflow channels that are in the downtown Flood Control Project have failed: For example, the Coleman Ave. to Hedding Street Reach (Contract II), the Hedding Street to I-880 Reach (Contract I) and the Trimble Avenue to Montegue Expresway Reach. These reaches are either eroding or silting up. This is contrary to permit criteria. Bypass channels must be designed correctly. According to a renowned professional hydrologist, bypass channels should be located 105-8

105-8 at the floodplain, or flood prone area level (near bankful) to prevent bypass channels filling with sediment.

Canoas Creek - Ross Creek

105-9 Canoas Creek and Ross Creek need more description regarding sediment transfer to the Guadalupe River channel. Canoas and Ross creeks are incorporated into this project and have similar sediment problems that impact the Guadalupe River. The DEIR/EIS needs to be rewritten (Canoas and Ross creeks need to be included) from a comprehensive engineering perspective that includes sediment transport and flow regime as well as finance and maintenance costs of the Stream Restoration Alternative. Furthermore, Canoas and Ross Creeks have been excluded from the wildlife surveys, even though Canoas Creek has documented use of the channel by a wide variety of species. A wildlife survey should be conducted.

Stream Restoration Alternative

105-10 The DEIR/EIS stated the Stream Restoration Alternative was rejected because of "regulatory uncertainty" and high project cost. The cost of this project is difficult to decipher (see 2. Project Description, above). Since "regulatory uncertainty" exists in any permitting situation, this should not serve as the basis for eliminating an environmentally preferable alternative from further consideration. The Stream Restoration Alternative would restore the natural sinuosity of the river channel and enhance sediment transport and provide for a stable waterway. By restoring the natural sinuosity, with the new vegetation stabilizing the banks, there will be a significant reduction in maintenance costs over the life of the Stream Restoration Project. The increased vegetation would shade the stream, increase habitat for macroinvertebrates (which are a food supply for fish) and enhance water quality by providing filtration and bank stabilization. The Stream Restoration Alternative is the environmentally superior alternative and should not be eliminated, but analyzed from an engineering perspective of sediment transport, flow regime, finance and maintenance costs.

Water Quality

105-11 The DEIR is unclear regarding vegetation and its maintenance program. One section in the DEIR states that vegetation in the main channel will be left undisturbed where ever possible. In another section, it states that vegetation will only be permitted to grow to 10 feet high and all non-native vegetation will be removed. This seems to indicate the Santa Clara Valley Water District is free to remove all vegetation in an area if it is non- native. Additionally, it is projected that up to 80 linear feet per year of stream bank will be converted over to a hard surface. It is clear that the thermal impacts over the life of the project will increase with the Preferred Project. It is not clear what the thermal impacts this project will have on the waterway at the end of

4. Upper Guadalupe River Comments Cont'd. April 21, 1997

construction, and over the life of the project. We feel permitting this project as is designed would destroy the Guadalupe River's cold water habitat and historic anadromous fish runs. Additionally, increasing stream temperatures greater than 5 degrees F. is considered thermal pollution and is prohibited by the Clean Water Act. 105-11

Further, there will be an increased use of herbicides in the project area because of the 18' wide roads, vertical walls, and ramps descending to the waterway. The increased use of herbicides with such extensive removal of vegetation will eliminate vast filtration capabilities and increase sedimentation due to bank instability. We feel these impacts, along with the associated high thermal pollution will significantly decrease water quality. 105-12

Fisheries

The DEIR/EIS states that as a means of mitigating project impacts to fisheries, the District would improve fish passage conditions by removing or modifying barriers to fish passage, thereby providing access to quality habitat in tributary streams. We believe the District is already under a legal obligation, pursuant to section 5901 of the Fish and Game Code, to remove all barriers to fish passage on streams from which it is licensed to appropriate water. By maintaining such barriers, the District is currently acting in unlawful violation of that section. There are organizations that have joined in bringing a complaint against the District before the State Water Resources Control Board, seeking to enforce section 5901 of the Fish and Game code and requesting a ruling that the District shall remove the barriers. We accordingly believe it is inappropriate for the District to claim performance of an existing legal duty as a mitigation measure for the proposed project. 105-13

The Judgement Settlement against the District, cited repeatedly throughout the DEIR/EIS, provides that: "The (District) shall continue the development of the District Guadalupe Fisheries Management Plan." This plan is not described in the DEIR/EIS, and the status of its development is unknown to us. However, it would be inappropriate for the District to proceed with any flood control project on the Upper Guadalupe unless and until the Fisheries Management Plan is complete. As the Plan was presumably already under development in 1995, it is not unreasonable to require the District to complete it prior to commencement of work in 1998, and to incorporate it into the Final EIR/EIS and before receiving a 404 permit. Finally, Mitigation Measure CRF-1, which includes providing fish passage at the gabion structure on Alamitos Creek upstream of Mazzone drive, is already part of the SRA Mitigation package for the Downtown Project. It is inappropriate for the District to claim this action as mitigation for both projects. Given that this project will continue until 2023 it is extremely important that the river be kept continually viable during the duration of the construction period. 105-14

Recreational Opportunities

It is unclear how this project will impact non contact water recreation. Water recreation was

5. Upper Guadalupe River Flood Control Comments, Cont'd . April 21, 1997

105-15 not addressed to any extent in the DEIR/EIS, nor the impacts this project will have on small craft recreation. The Guadalupe River is a navigable stream, and protected by the Public Trust Doctrine, the United States Constitution, the California Constitution and California Civil Codes. Both Federal and California case law state that citizens cannot be denied the right to access and recreate on navigable waterways. A 404 permit should not be issued until there is citizen clarity on recreational use of the river with small craft.

Conclusion

105-16 Our District recommends that a 404 permit not be issued until the Stream Restoration Alternative has been fully analyzed, along with the cumulative impacts to the river by the City of San Jose's International Airport expansion (fuel storage etc.), and the widening of highway 87 on the east bank. We believe it inappropriate that a permit be given before the FEIR/EIS is approved.

Sincerely,

Nancy Bernardi

Nancy Bernardi
Director

cc. Steve Shoenburg
U.S. Fish & Wildlife Service

James R. Bybee
National Marine Fisheries Service

Keith Anderson
Dept. Fish & Game

Margret Roper
Dept. Fish & Game

Deborah Johnston
Dept. Fish & Game

Terry Neudorf
Santa Clara Valley Water District

COMMENT LETTER 106

Canoas Garden Neighborhood Association
P. O. Box 36146
San Jose, California 95158-6146
408-264-1718

April 18, 1997

Santa Clara Valley Water District

Subject: comments re The Upper Guadalupe River Flood Control Project

We the residents of the Canoas Garden Neighborhood (a flood plain area bounded by the Guadalupe River and Canoas Creek) request the following amendments to the subject project.

1. Removal and correction of the down stream silting problem and the inclusion of an ongoing documented maintenance program.

   Those of us who live in the flood plain and have up to 35 years direct experience with the flooding that is intended to be corrected by the Project, can state from this first hand experience that the preponderance of our flooding problems (as witnessed Jan. '95) come from the lack of maintenance on the creek beds and bridge openings and further evidenced by the immediate subsidence in our neighborhood when the levee breached into Highway 97. Until there is a specifically funded ongoing program for maintenance flooding will continue to occur. 106-1

2. Correction of the backflow problem into the storm sewers in our area.

   Most of the flooding we have experienced in our neighborhood has been caused by the back flow through the storm sewers. Increasing the height of the retaining walls and levees only exacerbates this problem. We have witnessed water spouts up to a foot high coming from the manhole covers during flood periods. If this problem goes uncorrected the proposed Project will only serve to increase the flooding in our neighborhood. 106-2

We appreciate your attention to these items and inclusion of appropriate solutions in the project plan.

Sincerely,

David F Boutcher
President CGNA

CC: US Army Corps of Engineers

FAX 415 977-8483

April 23, 1997

Lieutenant Colonel Richard G. Thompson
District Engineer, San Francisco District
US Army Corps of Engineers, Regulatory Branch
333 Market Street, San Francisco, Ca 94105-2197

Attention: Regulatory Branch PUBLIC NOTICE #17776S

Dear Colonel Thompson,

The application by the Santa Clara Valley Water District for a 404 Permit from the US COE to construct the Upper Guadalupe River Flood Control Project, to excavate and place fill in 1.85 acres of wetlands and 10.6 acres of the Waters of the United States in the Guadalupe River, I find deficient in its assessment of irreversable impact to those wetlands and waters.

There are aspects of the flood control project that are not in compliance with the environmental mandate for avoidance of alteration of a stream's wetlands and waters as the preferred alternative. (Inflatable dams not coffer?) 107-1

This project has impacts to fisheries that are improperly assessed and that it is possible to avoid in the extent of the planned project. 107-2

The extent of thermal pollution is not accurately assessed and the proposed mitigation will not assure the survival of species that are extant in the main stem of the Guadalupe River. Species of particular concern or in need of protection are steelhead, and the chinook and coho salmon. 107-3

The integrated watershed management ascribed to the San Francisco Estuary Basin Plan and which the District supports should demand that the upper Guadalupe watershed be incorporated into the environmental assessment of this flood control project which it is not. And yet mitigation is planned beyond the parameters of the project in tributary streams of this upper watershed without biotic support data. 107-4

The design of wiers and inchannel gradient controls limit the constitutional right of the public to use these navigable waters for recreation. 107-5

The placement of fencing along the banks of this river and tributary streams is in violation of Public Resources Code 6301 and Civil Code Section 803, as it restricts the public and wildlife from access to the waterways. 107-6

There is a built-in design of the 'improved' stream beds that incorporates a maintenance road into the floodway. This may be convenient for the vegetation management but removes shaded riverine aquatic habitat and the vegetative buffer that is vital to reduce non-point source pollution of the stream. It would also contribute to bank erosion, through spraying maintenances practices, and sediment transfer to the base stream flow. 107-7

Finally, there is the concern that the original COE scoping document in 1976, for flood control of the Guadalupe River was assessing the historic watershed hydrograph, whereas present water supply practices double the volume of water that is stored in reservoirs and percolated into the aquifers, with Delta and Central Valley water imports. Alamitos and Los Gatos Creeks are conveyors of this new supply which should be evaluated for the 1% flood event. 107-8

107-9 1. Introduction: "1.85 acres of wetlands" I find is in error, first from the standpoint that loss of linear riparian wetlands should be assessed in linear feet, not acres, should be computed for both sides of the stream bank (times 2) and should be valued as of high value (times 3) for mitigation, and that mitigation should be in kind and in place, not uplands or on another river or in San Francisco Bay. My figures for riparian wetlands loss are somewhat staggering and I would like a continuance to submit them within three weeks. The 10.16 acres of Waters of the United States is also understated, I feel, and request continuance on that point also, and a review of the tree count.

107-10 2. Project Description: Second paragraph, line 6, refers to 1995 floods. The flood surge came from the Los Gatos Creek system that swamped downtown San Jose which is not within the scope of this project environmental review, though it probably should be if this was a complete integrated watershed plan. Third paragraph, first line, says the project would convey flows up to the 100-year flood. I feel that this is optimistic with the build-out and imported water. Last line of first page references step pool fish ladder at 15-foot Blossom Hill structure which is part of entirely separate implementation of Fish & Game Code.

107-11 Page 2, line 2, I disagree with the statement that these access roads are needed and that the present District practices of weed control are consistent with the criteria of the Clean Water Act. With the extent of vegetation removal this proposed project will increase simple bank erosion and sedimentation, though it can indeed stabilize undercut and sloughing off steep banks in some of the reaches. The statement that the project will improve biotic resources by removing fish barriers is true only in that Fish & Game insist that the barriers go, but the loss of riparian cover and wetlands and the attendant thermal pollution do not improve biotic resources. The construction of these flood control facilities, as designed, I feel will immeasurably reduce the survival of significant species.

107-12 The project construction period of 25 years is too long. The potential impacts of ongoing vegetation removal is giving maintenance a blank check to harass the habitat and contributes to continual destabilization, if the downtown flood control project is any example. In-channel construction has an extremely thin window of opportunity if it is not to seriously impact either incoming salmon or outgoing fry. The May 1 to October 15 is completely inappropriate in this South Bay river system and this criteria should be edited out at all references.

If the river is functional it should be able to carry its own sediment load and sediment removal and vegetation removal should be minimal. The removal of fish barriers in the main stem of the Guadalupe River provides no benefit to fish if there is not a tributary to go to that does not have a reservoir at the head of it. Not enough water and not enough shade will be lethal to the species of concern, the steelhead and the salmon. This applies equally to Reach A and to Reach 13, and the upper tributary streams are not biotically assessed so can not be considered an option at this time? (I don't have Vol. III)

107-13 I would like to state that the fishery biologist of Natural Resource Conservation Service for the West did briefly survey two tributaries and the Guadalupe River a year and a half ago. She found the heavily shaded reaches in the River, downtown near the railroad bridges, fine for salmon. Guadalupe Creek was feasible for the steelhead with the appropriate water regimen. Alamitos Creek, however, was too warm and murky for either. The brown trout seem comfortable there but she warned not to let them get to the other two water bodies as they are predators on the steelhead and the salmon redds and fry. This would mean that if modifications were made to Almaden Lake to allow steelhead and salmon access, the brown trout should all be removed.

At this point I would like to digress to the Fisheries: paragraph on the second to last page of this text. The mitigation here proposed for the cumulative impacts on fisheries habitat by the District is highly deficient in water quality, shade and refugia of biotic value. I would request that our fishery expert visit the stream for proper scientific review before this mitigation habitat is seriously considered. She was quite definite that the Alamitos Creek was not a steelhead stream, but am sure she would like to make her report in the appropriate scientific style of the Service. 107-14

To recondition the Coleman Road/Guadalupe Creek reach so that cooler refugia could be utilized by steelhead, would require considerable planting which might well be undertaken at this time. If the District is wedded to the prospect of the 10.7 miles of Alamitos Creek being viable, they could embark on a major planting spree there too. But both these sites demand the assured base flows from the reservoirs and I'm not at all certain that the District Board has any intention of providing that supply..This should be spelled out in the mitigation package before this 404 permit is given approval of any sort. 107-15

In this upstream watershed there is the extensive old Almaden Quicksilver Mines complex that impacts both Guadalupe Creek and Alamitos Creek with water quality point and non-point pollution from the mine tunnels (miles of them) runoff and the tailings instream. This needs scientific evaluation. 107-16

The thermal pollution on both Alamitos and Guadalupe Creeks is a watershed concern that should be spelled out in the District data as they must have the readings over the past two years. (Is this in the elusive Volume III that the District omitted to circulate?) This is essential data for any consideration or assessment of the steelhead or chinook habitat and the sustainability of runs. But 13.3 miles "of more suitable upstream..habitat" it is not!!! 107-17

Almaden Lake and the District percolation ponds above Reach 13 are an even more serious thermal pollution source and it is essential to review the instream management of these facilities in evaluating Reach 13 fishery potential and riparian integrity. At present most trees above the drop structure are dead from drowning in the percolation lake. 107-18

Ross Creek:
Thermal review of Ross Creek and Canoas Creek should also be included into the assessment of any wetlands or vegetation removal. Here again I feel the District should be planting assiduously, taking out concrete and maintenance roads and inviting the neighborhood to adopt-a-creek. There is at present a maintenance road on both banks and not a tree in sight of this nice stream. 107-19

Attached please find a map of areas favorable for groundwater recharge and note the value of Ross Creek in this regards. To line this prime percolation creek with 8,600 linear feet of articulated concrete matting is not a good watershed management integration with flood control. Great songbirds here also!!!

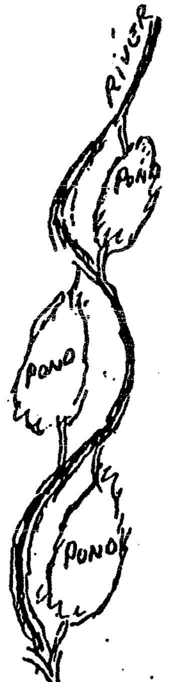
The increase in the use of herbicides to control preemergent vegetation along new access ramps and maintanance roads is an avoidable toxic impact. When you see almonds on a tree by a creek maintenance road you know dead squirrels mean dead burrowing owls and probably not too healthy pond turtles or red-legged frogs. This District practice has to stop in a wildlife corridor, so don't put in the access ramps and roads. This should be considered only in extreme conditions. This chemical spraying regimen is extremely unpopular with the public, as health concerns are valid. The pond turtles, osprey, steelhead, chinook salmon, owls, coho salmon (possibly) and red-legged frog are threatened or species of special concern that must be protected in project area! 107-20

Libby Lucas, 174 Yerba Santa, Los Altos 94022

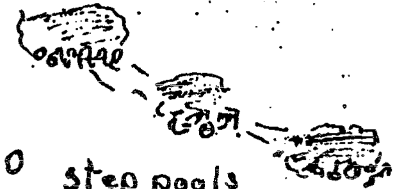
Libby Lucas

PS. Summary of Cumulative Impacts: There have been more projects on the Guadalupe River than you include here. Woz Way, pedestrian bridges, Confluence Point bridges, bank contouring and observation tower, light rail crossing, railroad bridge removal, hard edge treatment (removal of riparian vegetation) for Lincoln Towers, Adobe Systems, IBM Headquarters, Children Discovery Museum rock outcropping.... the list is endless and Highway #87 hasn't even begun. I estimate the tree loss at over 85% and it was you at the US Corps who gave out the permits. Initially your project as scoped left the old natural riparian corridor intact, more or less, for two thirds of the three-mile downtown project area. Redevelopment is remorseless! 107-21

EXHIBIT A . P24



off stream perc pond sites



O step pools

ꝭ infiltration galleries for streams modified over prime percolation gravels.

ALTERNATIVES

FOR IMPROVED INSTREAM RECHARGE PROGRAM

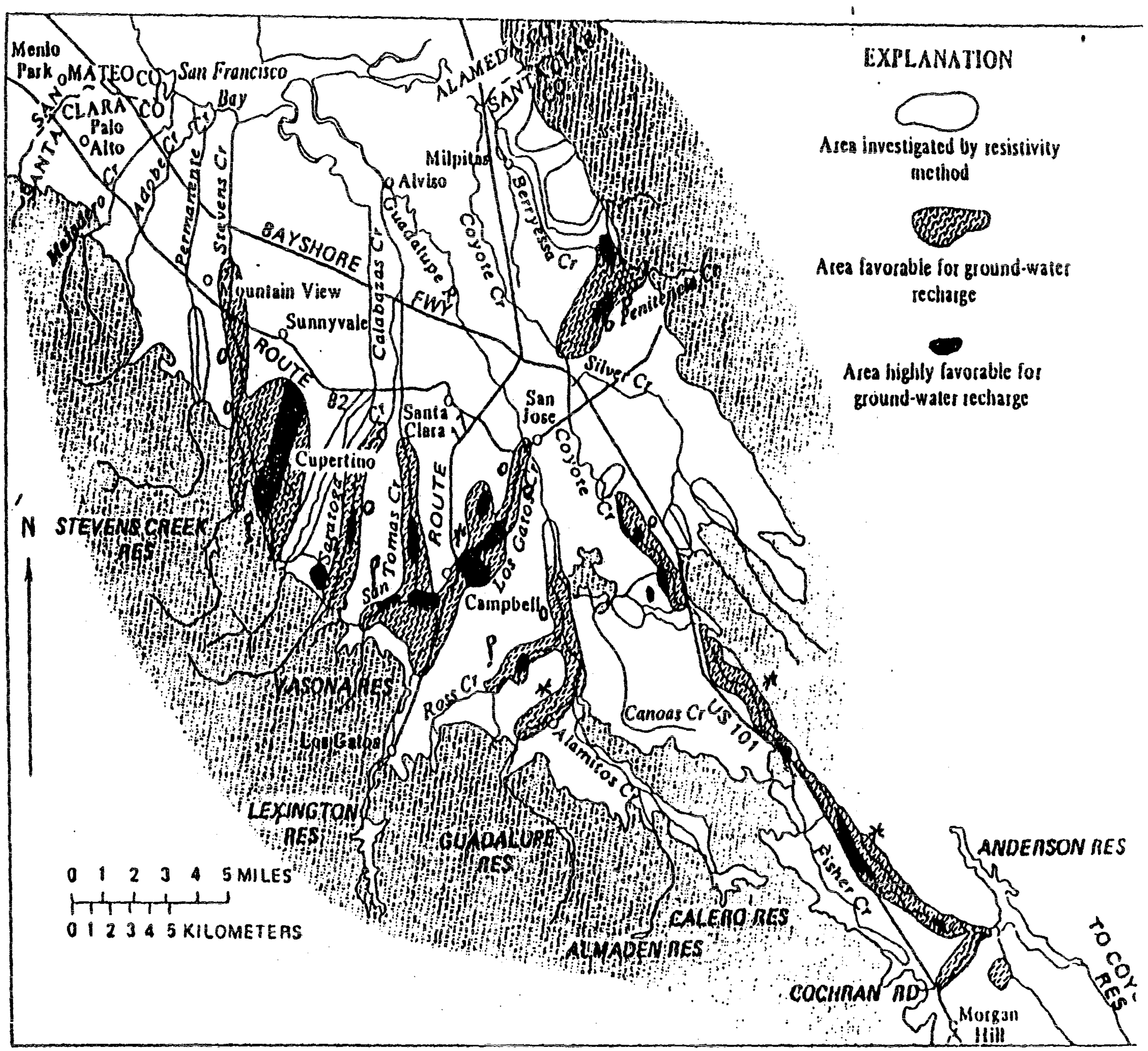


FIGURE 48.—Areas favorable for ground water recharge in northern Santa Clara County. After Page and Wire (1969).

** TOTAL PAGE.024 **

COMMENT LETTER 108

WESTERN WATERS CANOE CLUB□
□□
40 Redding Road□
Campbell, CA 95008□□
April 22, 1997□□Lt. Col. Richar
d G. Thompson Public Notice: 17776S□
District Engineer□Atten: Regulatory Branch□US Army Corps of Engineers□3
33 Market Street□San Francisco, CA 94105-2197□□□Subject: Santa Clara
Valley Water District's Application for a Permit under Section 404 of
the Clean Water Act (33 U.S. C. 1344)□□Reference: 1. Draft En
vironmental Impact Report/Environmental Impact Statement, Upper
Guadalupe River Flood Control Project, Dated January 1997.□
2. Western Waters Canoe Club, Comments on Ref. 1, Dated April 17, 1997
. □□ □Dear Col. Thompson:□□ Our club has reviewed Public Notice No.
177776S and hereby request that the Santa Clara Valley Water District'
s (SCVWD) application for the 404 permit be denied at this time for the
following reasons:□□1. The permit application is premature. The comm
ent period for the draft EIR of the Ref. 1 project only closed on April
13th so the SCVWD has not 108-1
had the time to evaluate all of the comments received as yet, much less
the time to respond to any of them. EIR needs to be finalized before
one of the project alternatives is selected for implementation. So at
this point in time it is unknown which of the alternatives listed in th
e EIR will be implemented, it could even be the no project option. The
SCVWD's application is based only on the assumption that their Preferr
ed Project Alternative will be selected and this has not been determine
d as yet. If one of the other alternatives is selected, would a permit
issued for the Preferred Alternative still be valid? There will be di
fferent impacts for each alternative. □□2. The EIR fails to adequately
address the Stream Restoration Alternative. We believe that this alte
rnative will prove to be the most viable option and that the Preferred 108-2
Alternative will be far too damaging to the river's ecosystem as per ou
r comments on the EIR, Ref. 2. □□3. The EIR is not acceptable as writt
en as it contains far to many
deficiencies, e.g. outdated information, inconsistencies, contradiction 108-3
s, and vague, unsupported or inaccurate information, as per our comment
s on the EIR, Ref. 2. □□4. The EIR does not address several important
topics. It fails to address water recreation, navigation and property
value impacts as a result of the various options. It fails to adequate 108-4
ly address conservation of our little remaining riparian, wild and aqua
tic resources in the area and gives no assurance that these resources w
ill not be further degraded by the project.□□5. Current or recently co
mpleted flood control projects in the Downtown and Lower stretches of t
he Guadalupe River are failing. Severe erosion is taking place, sedime
ntation build up in overflow channels is reducing water carrying capabi
lity of the channels and the river, promised low flow fish channels fil 108-5
l in as fast as they are constructed or cleaned and riparian mitigation
has failed and has not been replanted, see Ref. 2 Attachments 1-4 & A
ppendix 1-2. We feel very str
ongly that no new 404 permits be issued for flood control work on the G
uadalupe River until such time as the work being performed on the Downt
own and Lower Guadalupe River Flood Control Projects is brought into co

COMMENT LETTER 108

108-5 mpliance with their permits as per our comments on the EIR, Ref. 2.□□6.
We question how and when the ACOE's preliminary environmental assessm
ent was performed? There have been reports of Coho salmon in the Guada
lupe River system as little as a few years ago and historically it was
listed as a Coho and Steelhead River. Many Chinook and Steelhead still
use the river and both species are proposed for listing as threatened.
Southwestern pond turtles are known to exist in the river system and
in the project areas. We have observed, photographed and video taped t
hem. The ACOE also knows of these sightings as they attended meetings
with the Guadalupe Coyote Resource Conservation District when they were
reported. The ACOE was also provided a copy of a survey by Dr. D. Hol
land, turtle specialist, who s
108-6 tated there was turtle habitat in the Downtown FCP Contract 1 and 2 are
as and in Reach A of the proposed FCP. The ACOE stated in these meeti
ngs that they did not consider the turtles when they removed all of the
Contact 1 and 2 west bank vegetation.□□□ We are sending you our
comments by fax in order to comply with the notice deadline and will fo
rward you the original signed letter via the US mail. We have already
sent a copy of our comments on the draft EIR to Mr. Bob Smith, via mail
, for his information and because we reference it in our above comments
.□□□□□ Lawrence M. Joh
mann PE, CQE, CRE□□cc: J. Cadell□ GCRCD□
□□□3□□□

COMMENT LETTER 109

LIFEWEB
7500 Tierra Sombra Ct.
San Jose, CA 95120

Contact: Rick Bernardi
(408) 997-6067

April 23, 1997

Lt. Colonel Richard G. Thompson
District Engineer
Attn: Regulatory Branch
U.S. Army Corps of Engineers
333 Market Street
San Francisco, CA 94105-2197

Subject: Public Notice 17776S (Section 404 permit application for a project on the Guadalupe River)

Dear Lt. Colonel Thompson;

I am writing to object to the issuance of a permit at this time. We feel that a Section 404 permit is premature, because no EIR or EIS has been approved for this project, nor has the project itself been approved. In our comments on the Draft EIR/EIS, we pointed out several areas that should be addressed in a Final EIR/EIS before any project is approved. Other organizations have also commented on inadequacies in the Draft EIR/EIS.

In particular, several organizations, including Lifeweb, wish to see the *Stream Restoration Alternative* included in the Final EIR/EIS analysis. That alternative would have different impacts upon the stream, which would need to be a part of any Section 404 permit application. As you can see, this application before you presumes that the project will be approved as recommended by the Santa Clara Valley Water District staff, while many community organizations are urging the Water District board to adopt a different project. Since no decision has been made by the Water District Board, it is inappropriate for the Water District to apply for a Section 404 permit at this time, and it would therefore be inappropriate for the Corps of Engineers to issue a permit. Furthermore, we believe that considerable community interest in the preservation of this river exists, and that the application for a Section 404 permit warrants a public hearing. Accordingly, we urge you to deny a Section 404 permit to the Santa Clara Valley Water District until such time as an EIR/EIS has been certified and a project has been approved. 109-1

Sincerely,

Rick Bernardi

BOB SMITH
ATTN: REGULATORY BRANCH
U.S. ARMY CORPS OF ENGRS
333 MARKET ST, S.F., CA 94105

APRIL 18, 1997

REF: PUBLIC NOTICE #17776S, OF MARCH 24, 1997

MR SMITH:

1. AFTER EXAMINING THE DWGS SENT TO US BY YOUR OFFICE, WE ARE UNABLE TO FIND THE NUMERICAL RELATIONSHIP BETWEEN PROPOSED CAPACITY OF THE FINISHED VERSION AND THE EXISTING HIGH WATER VOLUME. THIS COMPARISON IS FUNDAMENTAL IN FORMING AN EVALUATION OF THE PROJECT. PLEASE TELL US WHAT YOU PROPOSE THAT NUMERICAL RELATIONSHIP TO BE. 110-1

2. JUDGING BY THE LARGE EXTENT OF PARALLEL DIVERSION CHANNELS PROPOSED, IT APPEARS THAT THERE ARE AIMS BEING PURSUED OTHER THAN SIMPLE FLOOD CONTROL. WHAT ARE THOSE AIMS? 110-2

VERNON D. TRIPP
24066 TULIP DR,
WILLITS, CALIF., 95490
(707) 459-4515

COMMENT LETTER 111

To: <rsmith@smtp.spd.usace.army.mil>
From: PugSV@aol.com
Cc:
Bcc:
Subject: Comments: Application of Santa Clara Valley Water District #17
Attachment:
Date: 4/24/97 8:51 PM

Mr. Smith:
I have concerns about the plans for maintainence of the constructed channel
below ordinary high water level. The EIR for the Vegetation Management Plan
for the Santa Clara Valley Water District has not come out for public 111-1
review.
Will changes in the Vegetation Management Plan be able to alter channel
design of this project in the future? One such change might be that loads
going into the channel should be less wide to cause less destruction of
wetlands. Vehicles and processes can be developed to allow for less wide
access roads. Current use throughout the water district of herbicides
defoliates not only the top of the bank where access roads often are, but
down the bank. Water quality in the channel is impacted by the sediment
running into the channel and the loss of a vegetation filter for sediment 111-2
and
nutrients. Hopefully part of the vegetation management plan will include
intensive communication neighbors whose homes or businesses abut the river
channel. Encouraging them to plant native channel shading trees will
improve
the size and quality(including water quality) of the riparian corridor and
educate and involve the property owners.

So much of the water quality of the Guadalupe in the Project area involves
dealing people who visit and sometimes live on the banks. Sometimes an
individual has a minor impact, sometimes one individual or group from an
apartment complex can have a major impact. How will the project deal with 111-3
the
direct human aspect of water quality and wetland degradation.

The project doesn't include an independent monitor to educate and watch
construction crews while they are working in sensitive area. I noticed that
a native elderberry(Sambucus mexacana) along the top of the bank of the 111-4
Guadalupe upstream from Branham lane was sprayed with a herbicide for no
apparent channel capacity increasing reason. An Independent monitor should
always be used in projects where listed or nearly listed species are found.
Accidents happen, but a more educated crew with a biologist ready to answer
questions will screw things up less.

111-5
The construction timeline could result in killing off Chinook Salmon which
have been documented again, and again to be moving up the Guadalupe starting
in July. A release of water or some rain could trigger a fish migration
right into the construction zone.

Public Safety is said to be enhanced by the project, yet hardscaping the
channel and increasing high flow velocities make it more likely that anyone
caught in the channel during a high flow event will be swept down the river 111-6
with little or nothing to grab onto to get out. A Los Angeles youth went 5
miles down a concrete channel and finally died under a bridge. Plans for
trails next to such high velocity stretches(similar to downtown San Jose)
worry me.

Alternatives to the Project have not been adequately addressed. Plans for 111-7
increasing the size of Calero Reservoir (upstream of the project) have been

111-7 mentioned in the past. Could this be a possible alternative, or part of an alternative plan to reduce flooding potential? Has the purchase of backyards or portions of backyards been considered?

111-8 I am concerned that a mix of traditional and "Rosgen" methods will be difficult to stir up together to make a project that is not "half-baked".

Thanks for your time,

John Beall

1275 Heatherstone Way
Sunnyvale, Ca. 94087
(408)739-3756
PUGSV @ AOL

COMMENT LETTER 112

```
         To: <rsmith@smtp.spd.usace.army.mil>
       From: Nadell Gayou <ngayou@rivercity.water.ca.gov>
         Cc:
        Bcc:
    Subject: Public Notice17776S(Santa Clara Valley WD)
 Attachment:
       Date: 4/23/97 3:42 PM
```

he subject public notice was received on March 31, 1997 and distributed to he following agencies. Their responses are noted.

epartment of Boating and Waterways	No response	
epartment of Parks and Recreation	No comment	4/3/97
epartment of Fish and Game	No response	
an Francisco Bay RWQCB	No response	
tate Lands Commission	No comment	4/16/97

f any additional responses are received within 30 days of this response, I ill forward the information.

```
#####################################
# Nadell Gayou - Review of Reports ##
#   Division of Local Assistance    ##
#   Department of Water Resources   ##
#   1020 9th St. - Third Floor      ##
#   Sacramento CA 95814-3515        ##
#  (916)327-1722 CALNET 467-1722    ##
#     FAX (916) 327-1648            ##
#     ngayou@water.ca.gov           ##
####################################
```

112-1

MINUTES
SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTORS PUBLIC HEARING
UPPER GUADALUPE RIVER FLOOD CONTROL PROJECT
April 3, 1997

(Paragraph numbers coincide with agenda item numbers)

An adjourned regular meeting of the Board of Directors of Santa Clara Valley Water District was held in the cafeteria of the Willow Glen Educational Park, 2001 Cottle Road, San Jose, California, at 7:30 p.m. on April 3, 1997. *Adjourn Reg Mtg*

1. Board members in attendance were Directors T. Estremera, R. W. Gross, L. Wilson, G. Zlotnick, and S. Sanchez, Chairperson presiding, constituting a quorum of the Board. Director J. Judge arrived as noted below; Director R. Kamei was absent. *Pres Bd*

Staff members in attendance were A. C. Bennetti, D. Cheong, E. Cote, L. L. Keller, R. Talley, P. K. Whitlock, and S. M. Williams. *Staff*

Chairperson Sanchez introduced the Board members present.

2. Chairperson Sanchez opened the public hearing on the draft Environmental Impact Report/Environmental Impact Statement for Upper Guadalupe River (Highway 101 to Interstate 880 and Highway 280 to Blossom Hill Road). A copy of the report is on file in the District library. *Opn Pub Hrg*

Chairperson Sanchez welcomed those attending the public hearing. He explained that the purpose of the hearing was to receive comments on the draft Environmental Impact Report//Environmental Impact Statement (EIR/EIS) for the Upper Guadalupe River. He said that no decision on the project would be made at the public hearing. Chairperson Sanchez stated that during the course of the study a series of neighborhood and public meetings were held in the community to discuss the flood problems, alternative solutions and their environmental impacts, and to describe the recommended project. As a result of public input, the District made revisions and modifications to the project and believes the proposed project has minimized, to the extent possible, impacts to vegetation and adjacent property owners. He explained that the draft EIR/EIS has been out for the past 40 days and that oral statements and additional written comments would be accepted at the hearing. Written comments will be accepted through April 18, 1997. The Board will make a decision whether to proceed with the project after that date, based on the written and oral comments received. All those making comments on the draft EIR/EIS will receive responses and will be notified when the Board will take further action.

Chairperson Sanchez announced that there was a Spanish-speaking interpreter available at the hearing.

Chairperson Sanchez introduced Ms. P. Kay Whitlock, Assistant General Manager, who would be acting as the hearing officer.

Director Judge arrived.

Ms. Whitlock explained the process for the public hearing stating that staff would present a detailed description of the proposed project, including the environmental assessment. Following that, Ms. Whitlock indicated that she would enter into the record any written comments received to date. Following those comments, Ms. Whitlock would enter into the record any comments received from the audience. She requested that members of the audience wishing to speak fill out a speaker card. She said that simple questions would be responded to and lengthy comments or issues involving individuals would be handled separately.

Ms. Whitlock explained that all significant environmental comments would be responded to in the final EIR and that written comments would be accepted until April 18, 1997. She said that the Board would not consider additional actions until staff evaluated the comments and presented the responses to the Board. Notifications of the date of the Board meeting when the Board will consider the comments and responses will be sent to those persons signing in at the meeting or signing in to make comments. She said that if individuals had questions to discuss in order to finalize their written comments, staff would be available following the hearing.

Ms. Whitlock noted that there were no written comments received to enter into the record.

Appear R Smith SF Corps of Engrs

Mr. Robert Smith, San Francisco District of Corps of Engineers (Corps), explained the joint EIR/EIS process, and stated that the Corps was involved in the process because the District had made an application to the Corps for a permit to discharge fill into waters subject to regulations under Section 404 of the Clean Water Act. The Corps determined that the action may have a significant impact on the quality of the human environment and therefore required the preparation of an EIS in accordance with the National Environmental Policy Act of 1969 (NEPA). The Corps is working with the District to produce a joint EIR/EIS in order to reduce duplication between NEPA, and the state and local requirements. He explained that NEPA is the national charter for protection of the environment whose purpose is to ensure that environmental information is available to public officials and citizens before decisions are made and actions are taken. He added that the NEPA process is intended to help public officials make decisions based on understanding environmental consequences and take actions that protect, restore, and enhance the environment. He said the joint public hearing was being conducted for the purpose of acquiring information and evidence which will be considered in evaluating the proposed 404 Permit action and to afford the public an opportunity to present their views, opinions, and information on the project.

Mr. Dennis W. Cheong, Associate Civil Engineer, Water Resources Management, using a slide projector, presented an overview of the project, outlined the area covered by the project, and illustrated the areas affected by past floods—particularly the January and March 1995 floods. He said that major work would be performed from Highway 280 to Blossom Hill Road, as well as some minor work proposed from Highway 101 to Interstate 880 as well as Canoas Creek and Cross Creek. He explained that the anticipated 100-year flood had a 1 percent chance of occurring in any given year at a cost of about $280 billion dollars and would possibly inundate 7,200 residences, public schools, and hundreds of acres of commercial/industrial properties.

Mr. Cheong explained that a series of meetings have been held since 1989 up to the post-flood meeting in 1995 and some comments received were incorporated into the draft report.

The report has been refined and staff has met with the cities and regulatory agencies to work out future plans. He noted that the creeks in some areas are relatively small, therefore there are different proposed alternatives for creeks of different sizes. He reviewed the existing conditions along the creek and described the proposed flood control project, as set forth in the engineer's report. He then outlined the proposed mitigation, illustrating various mitigation measures used on other creeks.

Mr. Cheong explained that the benefit of the flood control project is to protect residents from the 1 percent flood, and the project would provide continuous maintenance access for maintenance in the creek, as well as into the bypass channel, which would result in less frequent repairs. He said that the project's estimated cost was $114 million and was scheduled for completion in 25 years, assuming the continuation of the benefit assessment beyond the year 2000. He pointed out that if funding from other sources was received, construction could be sooner.

Appear
A Solbert
Jones & Stokes
Assoc

Mr. Alan Solbert, Jones and Stokes Associates, provided a summary of the environmental impacts and mitigation measures of the preferred project.

Using a slide presentation, Mr. Solbert reviewed the vegetation and shaded riverine aquatic habitat. He said that the riparian habitat throughout the project had been identified and one of the main components of the study was to address what kind of shaded riverine aquatic habitat is affected by the project. Mr. Solbert explained that a reach-by-reach analysis of the different vegetations was completed, and that the mitigation is on a 1:1 basis except for the riparian habitat which is on a 2:1 basis. He noted that a key aspect of the project was that over 50 percent of the riparian forest to be removed consists of nonnative species. There are no federally endangered or threatened plants in the project area or stake, and the post-mitigation riparian forest would increase by at least 20 percent. He said that the impacts to wildlife would be mitigated by mitigation measures for vegetation and habitat. Mr. Solbert said that some special listed species such as the California red-legged frog, the foothill yellow-legged frog, and the pond turtle have not been observed during the 1995 and 1996 surveys. He said that the District is continuing surveys and is committed to conduct preconstruction surveys in coordination with Fish and Wildlife Service on the project.

Mr. Solbert continued his presentation and discussed the mitigation measures relative to fish migration and visual resource impacts. Relative to fisheries impact, he said that the District is proposing to provide a fish passage on Alamitos Creek at the head of Lake Almaden and upstream of Missoni Drive. He said that this action is a cumulative impact mitigation proposed by the District, and there is ample habitat units to provide for direct mitigation for the downtown Guadalupe project. He then illustrated slides of the various stages of the project from a view along Mackey Avenue north. He pointed out that the report also contained information regarding land use and socio economics. Mr. Solbert explained the District's relocation assistance and housing plan.

Referring to a map, Mr. Solbert illustrated the location of the various projects and continued his presentation on mitigation measures. He explained that the District is proposing to implement revegetation during the first fall planting season after each reach construction. In addition, the District is focusing on construction in Reaches 6 and 12 at the beginning of the project.

PUBLIC HEARING COMMENTS

Mr. Solbert explained that the next step of the process was obtaining public comment, noting that the deadline for written comments was April 18, 1997. He said that staff would remain after the hearing to answer questions. He explained that the District proposes to review the comments, prepare the final EIR/EIS, and release the report in the Fall of 1997.

Later in the meeting, Mr. Solbert clarified that there was presently a glossary of the terms in the EIR/EIS report.

Appear
T Fletcher
Cy SJ

200-1 Mr. Tom Fletcher, representing the City of San Jose (City) Public Works, said that the City supported the District's efforts in the project, and commended staff for the thorough job in developing the project. He said the project meets a very important community need with respect to flood control. It meets not only the goals of the District charter, but also the goals of the City's General Plan, with respect to flood control. He stated that the City staff has worked with the District in development of the project, particularly with the parks' trails issues and the issue of the future widening of Almaden Road, and will continue to work with the District to achieve the best feasible project for San Jose.

Appear
J LaGalante

201-1 Ms. Judith LaGalante, 20124 Thompson, Los Gatos, said that she owned property along Reach 10 and was pleased with the project. She said that although many people were concerned about the safety issues, she was concerned with the aesthetics, and felt that all great cities were located on water. She referred to Sacramento's plan to reserve space to develop a 50-mile parkway with running and bicycle trails, riding trails, and fishing and boating spots. Ms. LaGalante said that the Guadalupe River had been neglected for too long and she hoped that San Jose would have the vision to develop this wonderful resource and make San Jose the great city it could be.

Appear
R Long

202-1 Mr. Robert Long, 2529 Winchester Boulevard, Campbell, representing the Saratoga Sportmen's Association, expressed concern about debris such as shopping carts, concrete pieces, and sofas dumped in the creek. He said that, although the report indicated there were cleanups, he did not see it occurring. He questioned why there would be a liability associated with creek cleanup when cleanups such as trails and parks were conducted.

Comments
Fr K Clark

203-1 Ms. Whitlock entered into the record comments and questions from Ms. Kathie Clark, 1009 Blossom River Way, San Jose, representing the Atrium of San Jose: "(1) Relative to Reach 12, will there be access for walking from Blossom River Drive? (2) Will there be night lighting? (3) Will there be security? and (4) What time will it be locked?

Appear
A Benkert

204-1 Mr. Andrew Benkert, resident, said that his concern was with the overall ecosystem and flood control in particular. He said that everyone is aware throughout the state recently and nationally when the people try to control rivers and channelize them to control their flow, eventually the rivers jump their banks and Mother Nature takes over. He suggested that instead of creating bypass channels, extend the levees and allow the river to run its course, which he felt would be better for the ecosystem as a whole and the river in particular, as well as for the wildlife that the river and ecosystem contain.

Mr. Mark Protsik, 1575 Harvey Lane, San Jose, expressed concern about the report in that it appeared that the impact was for the final project as a whole rather than the interim impacts during construction. He said that because the project would take over twenty years to complete, it was important to ensure that the construction doesn't temporarily exacerbate either the flood situation in any particular reach or temporarily injure the habitat of any specific reach downstream, especially relating to sedimentation. He said he was also concerned with the bypass channel, and said, although he favored the bypass channel in principle, he did not want it to become a primary channel. Mr. Protsik said he wanted to ensure that the natural stream remains the primary channel, and although allowing growth was appropriate, the human impact is that there will be garbage dumped. He stated that there needs to be regular maintenance, particularly with the disposal of the debris. *Appear M Protsik* 205-1

Mr. Allen Aaronson, 2138 Cedarwood Lane, stated that his comments had been covered by previous speakers. *Appear A Aaronson* 206-1

Mr. Kevin David, 1641 Mackey Avenue, San Jose, asked questions relative to the date the study began: Who requested it; total amount spent to date and the total cost of the study; was the money spent on the study going toward the purchase of homes on Mackey Avenue; was he paying county taxes to purchase his own street and risk being evicted? Mr. David requested that the questions be answered at the meeting. *Appear K David*

Mr. Randall R. Talley, Supervising Engineer, Water Resources Management, responded that the study began in the mid-80s and stated he was involved then also. Mr. David responded (expletive). Mr. Talley then reported that the Guadalupe River had been part of the Corps' project downtown for some time and in the early 80s that particular area dropped from the study, at which time the local district took it over and attempted to continue the study. He said that approximately $6 million was spent on the project. Mr. David then questioned if the money was spent on the acquisition of homes before approval on his street and in other areas, for a total of $11.6 million, and questioned the right of the District to spend those funds without approval. 207-1

Mr. Talley explained the District's voluntary acquisition program for the area, noting that if the owner wished to sell the home, the District purchased it. He said that the program was instituted because the District knew the project would require acquisition of many homes and it would reduce the burden on the District as well as the homeowners, in terms of immediate acquisition. He noted that the voluntary acquisition program has been successful.

Mr. David questioned whether the money spent for purchasing homes could be considered "insider trading" and asked what was done with the rent money from the District-owned properties. He expressed frustration that when the homeowners attempted to sell their homes they were told it was a downgraded neighborhood, and he said he felt it was because the District had so many rentals in the area. In response to Mr. David's question, Ms. Whitlock explained that the rental income was included in the revenue for the Central Zone which supports the projects in the zone. She said that the remainder of Mr. David's comments would be entered into the record. 207-2

Members of the audience requested that Mr. David conclude his remarks and allow someone else to speak. Mr. David objected, stating that he had the floor and still had questions to ask.

In response to Mr. David's question about how much the property acquisition was, Ms. Whitlock said she was not sure if anyone had the figures on hand. Following a calculation, Mr. David indicated that he estimated $11.6 million of taxpayers' money was used to speculate on what the District had decided to do, and he asked why his neighborhood was the prime candidate for the bypass channel. Mr. Talley responded that the bypass channels were appropriated in areas where the channel is most inadequate, as explained by Mr. Cheong earlier in the meeting. Mr. Talley stated that flooding had occurred in the area, and Mr. David disagreed. Mr. Talley reiterated that flooding had occurred in 1995 and the District was attempting to avoid the impact to the rich riparian corridor in the Mackey Avenue area and yet still provide adequate capacity to the channel. He said that bypass channels work in certain areas and indicated that the Mackey Avenue area was one of them. 207-3

Mr. David said that it was a difference of opinion, and suggested that the District put the bypass channels upstream where there were no houses involved. Relative to the fish and the project layout, Mr. David said he felt the project was a good idea, but that there were other methods to consider. He asked for verification that the project would reduce the chance of flooding, and asked why houses were being taken just to reduce the chances of flooding, rather than eliminate the flooding.

Appear
F Cucuzza

Mr. Frank Cucuzza, 71 North San Pedro Street, San Jose, said he supported flood control, but expressed concerns about the environment and the ecosystem. Referring to the report, he questioned how long it would be for the vegetation to return to the area, and what state would it be returned to, if gabions were used. He noted that he was told earlier that it would take 75 years for mature trees to return. He reported that about 15 years ago, gabion was put in his backyard and there were no longer any mature trees in that particular area. He asked if there was another system that the District could use and how long would it take for the riparian corridor to repair itself and return to its natural state. Later in the meeting, Mr. Cucuzza referred to geogrid, which allows for simultaneous planting and quick growth of the vegetation, and asked if the District had ever considered geogrid. 208-1

Mr. Solbert said that the expectation was that much of the riparian system would reach the point where it would provide shade over the stream in a 30- to 40-year period, but that for total maturity for all systems, it would take longer. He said that it is the District's goal to plant quick-growing species, and he said that in areas that do not presently have riparian, they are filling in the gaps. He noted that Reach 10B near Almaden was an area that the District and others have done extensive analysis of soils and water table in order to implement a more biotechnical approach to dealing with the low flow and the riparian habitat in that reach. Mr. Solberg said that there were very few areas using gabions in the project.

Appear
R Robinson

Mr. Russ Robinson, 10825 W. Estates Drive, Cupertino, representing the South Bay Yacht Club in Alviso, voiced the Yacht Club's support of the project. He commended the District on the excellent job in attempting to mitigate wherever possible and move the project along. He presented a brief history of the Yacht Club's experience with the 1983 flooding. He reported that the club now sits on a levee and is protected from flooding. He said that Alviso supports any project that reduces the threat to downstream residents and stressed the importance of completion of all projects in the Bay to ensure the effectiveness of the subject project. Mr. Robinson urged the District to accelerate the project out of the 25-year range. 209-1

Appear
K Laucher
210-1
210-2

Mr. Karl Laucher, 919 Franquette Avenue, San Jose, editor of the Willow Glen Times, said he was a resident of Willow Glen for 30 years and felt he lived in an asphalt jungle. He said he felt the 25-year timeframe was unreasonable. He said that he felt the trails were significant, and expressed disappointment that the developers and City Council members were allowing houses to be built up to the edges of the creeks and the beauty of the rivers was lost. He said it was unfortunate that some homeowners would lose their homes in floods because they were not built on stilts. Mr. Laucher said that the 25-year plan should be a 5-year plan and be a priority for the City. He pointed out that following the earthquakes in Southern California, the highways were rebuilt in three months because it was a priority.

Appear
R Castillo
211-1
211-2

Mr. Roger Castillo, 1596 Ivycreek Circle, San Jose, said that he has been a San Jose resident for over 35 years and has utilized the creek as a resource with friends and children, noting that his children could see the benefits of the ecosystem with the return of steelhead, salmon, and the birds back to the area. He said he supported flood control, but noted new technologies that would protect flood victims would not work with some of the older flood control models that engineers were familiar with. He pointed out that there was no mention of maintenance costs. He discussed the use of herbicides and said that the residents could make the choice for a green area or a desert-like area. He also expressed concern regarding the litter in the main channel noting that it posed a danger, especially for children. He said that the channel presented a potential recreational asset but that the big picture should be considered relative to flood control, recreation, and protection of the environment. He commented that last year there was a 50- to 60-yard stretch that took six days to dredge out, and presently ¾-mile was completely silted up. He questioned who would pay to have it dredged out. Mr. Castillo said that it was unreasonable to consider a new phase before proving that the first phase was successful. He urged those present to visit the Coleman and Hedding area for verification.

Appear
N Bernardi
212-1

Ms. Nancy Bernardi, 7500 Tierra Sombra, San Jose, said that she has been a student of the Guadalupe River flood control projects for a number of years and she concurred with Mr. Castillo's comments. She said there needed to be a comprehensive plan that included all the different components to make it a workable plan. She pointed out that the sediment buildup in the downtown area was an indication of a failed project in certain areas. Relative to the Upper Guadalupe River, she said that if the fish barriers were removed, it would provide access to the fish upstream, but would not help them as they would not be in a traction flow. The fish are spawning downtown where the deeper, cooler waters are. She said she felt mitigation was not the correct plan because the fish don't know they should be going upstream. Ms. Bernardi said that the fisheries management plan should be implemented by 1999 and suggested adding it to the package to have comprehensive planning for a worthy project.

212-2

Ms. Bernardi said that, while she felt the proposed project was an improvement over the downtown project, she would like to have an analysis of the stream restoration project alternative discussed, because if it is a geomorphologically correct channel, it will transport the sediment out and if connected to everything, it would produce a number one project for the City.

Appear
M Voorhoeve
213-1

Mr. Marc Voorhoeve, 912 El Rio Drive, San Jose, a resident of Zone 10, expressed concern about the District's decision to cut away the bank on Almaden roadside, to a depth of 18 feet particularly during the summer, which would hinder residents from crossing the creek and walking up the backside of their homes. He pointed out that many residents have gates to access areas to clean shrubs and areas behind their homes. He questioned if the ramps would be locked at night or opened for future walking and trails and would there be any ability to separate that area from actual access of creeks? He emphasized that he felt the timeline for construction should be minimized.

214-1 Mr. Larry Ames, 1218 Willow Street, San Jose, expressed his support for the project design and said he was pleased that it was sensitive of the environment. He said that he was also pleased that the District was not proposing concrete walls in its place and commented that it was an improvement of designs he had seen in other areas. He expressed his support for a recreational trail, noting that it was part of the County Trails Master Plan to include a recreational trail, and urged the District build a trail and work with the County and City to create as much public open space in the area as possible. ***Appear L Ames***

215-1 Ms. Bobbie Paul, 3767 Wellington Square, San Jose, asked questions about the sections destined to have the gabions. She said that it was explained earlier that input from the first meeting improved things. However, she noted that previously the land on Almaden Expressway between Capitol Expressway and Branham Lane had about 20 to 25 feet that was not fated to be cut away, and six trees remained. She said that the land now is scheduled to be cut away 5 feet from her fence and she asked why the change came about. She expressed concern that her swimming pool was 8 feet from the fence on the other side and she was uncomfortable with the fact that she had the deep end of her pool and a gabion sinking down 5 feet from the fence. Ms. Paul questioned if there was a change downtown which worsened the flood situation, requiring that the section be cut away more. She said it appeared severe, and noted that the water was not a problem in that area. She questioned the decision to preserve the expressway side of the river with the natural habitat and place the concrete on her side. She said that although it is gabion and mesh, it appeared unnatural and asked if the two could be reversed. ***Appear B Paul***

215-2 She said she was willing to put up with the concrete because she had trees outside the gate. Ms. Paul remarked that the situation was becoming a nightmare and requested that the neighbors be permitted to contribute to the regrowth, revegetation, pruning, and raking because the maintenance was inadequate. She requested specific answers to her questions.

Ms. Whitlock said that staff would respond to all the questions in the response document.

216-1 Mr. Louis Zarate, 710 Palm Street, San Jose, suggested that a glossary of terms be included in the report to help the public understand the presentation. ***Appear L Zarate***

216-2 He also commented that the report was not printed in Spanish.

216-3 He said that he categorized the project into three phases, the first phase relating to the possibility of the individual homes being purchased by the District. He noted that there were several homeowners in his neighborhood who as yet did not know if they would be affected. He said while he believes that the District has been doing an excellent job in trying to communicate with the community, he felt there were still failings in some areas.

216-4 Mr. Zarate reported that dump trucks were dumping in the empty lots in his neighborhood, and he questioned what was being dumped and why.

216-5 Mr. Zarate said that he felt a separate impact report should address the construction stage of the project. He remarked that McLellan Street was slipping into the river and that the District had spent thousands of dollars trying to prevent it from happening. He questioned the cost and whether or not it was still slipping into the river, and the impact of the work, noise, and trucks on the neighborhood.

216-6 He also questioned the fencing used on the frontage area, particularly along the bypass canal, stating that safety was a concern because of people dumping things in the

creek and also people sleeping in the creek area. He asked for answers relative to monitoring
the bypass and the height of the fence. He said that he felt the environmental issues were well
addressed in the report, but questions about the impacts of the construction were still 216-7
unanswered. He reiterated his concern about safety during the construction phase.

Ms. Whitlock read into the record concerns from Mr. Tom Borden, 3212 Kenhill Drive, *Comments*
San Jose. He expressed concern about the Fall planting for vegetation; stated that a number of *Fr T Borden*
bridge projects were planted in the Fall and were washed away with the heavy rains and water
releases from the reservoirs. He asked if the planting would be planted early enough to be strong
to survive instead of being washed away? He summarized his concerns about the planting 217-1
schedule and the vegetation. She said that his concerns would be addressed in the report.

Mr. Larry Johmann, 40 Redding Road, Campbell, representing the Western Waters Canoe *Appear*
Club, and the Guadalupe-Coyote Resource Conservation District, said that relative to the EIR, *L Johnson*
there was no mention of the Rivers and Harbor Act in the report, nor was recreation addressed.
He asked that the potential recreational use of the river as well as the stream restoration
alternative be addressed relative to cost figures. He said that he had spoken with a stream
restoration specialist whose projects cost between $6 and $60 per lineal foot of river to restore
the river back to its natural channels, which would total less than $1 million for the project. 218-1
Mr. Johmann asked that the removal of concrete rubble in the channels also be addressed in the
report, as it poses a danger and blocks fish migration, not to mention is unattractive. He said
in his opinion, flood management works—flood control does not. He noted that the levees would
eventually fail and would cost more in damages than if the river wasn't restraining the levee.
He asked that the maintenance costs be addressed in the report also. He then addressed the issue
of shade and cover and pointed out that the downtown projects did not have shade. He said that
the District promised low-flow channels for the fish and they did not exist. He questioned why
another project would start when the others were not workable. Referring to a document dated 218-2
September 1995, wherein the District stated that the fish barriers would be removed by 1996,
Mr. Johmann noted that it was not accomplished and requested a response.

Ms. Whitlock read into the record questions from Mr. Jon Oakes. He asked how he could *Comments*
find out what the exact plans were for a particular property (corner of Willow Glen Way and *Fr J Oakes*
Creek), as he was considering purchasing the property. He indicated he was concerned about
the affect the project would have on living conditions during the project and the impact on 219-1
long-term property value. Ms. Whitlock suggested that Mr. Oakes contact staff personally to
discuss the specific impacts in the site specific area.

Mr. David Boutcher, 2576 Bobolink Drive, Sunnyvale, questioned if an estimate was *Appear*
available relative to the savings in flood insurance premiums or would the areas still be classified *D Boutcher*
as a floodplain? He asked if the mercury contamination present in the streams would be contained
to its present area or would it spread and would the fish with access to new areas be 220-1
contaminated by the mercury? Ms. Whitlock said that, relative to the flood insurance question,
staff hoped to have the area certified and removed from the flood insurance rate maps. She said
that the other questions would be addressed in the report.

221-1 Mr. Rick Bernardi, 7500 Terra Sombra Court, San Jose, asked if the majority of the EIR addressed the preferred project alternative. Mr. Solbert responded that the majority of the report related to the preferred project and the minimized vegetation impact alternative. Mr. Bernardi suggested that a more thorough treatment of each alternative be included in the final document. He said he felt it was important because both CEQA and NEPA require that the range of alternatives be presented to decision-makers, and the EIR as written appears to steer the decision-makers toward the preferred project alternative, although other alternatives are briefly mentioned. He said the decision-makers need to remain impartial and weigh each alternative. Mr. Bernardi pointed out that the minimized vegetation impact and the stream restoration alternative both present environmentally desirable alternatives to the preferred project alternative. He said that the stream restoration project alternative had short-term impacts which were greater than the minimized vegetation impact, but in the long-term you were dealing with a project with less impacts, and he said it was important to bring that out in the document so that the decision-makers could make the appropriate decision. *Appear R Bernardi*

222-1 Mr. Bud Beede, 352 Hull Avenue, questioned if the District proposed to build a wall along Highway 280 to intercept the flow to prevent a reoccurrence of the downtown flood, and asked what was the guarantee that the wall would be built in the correct order, so that the stream improvements are completed sufficiently to intercept the flow to Reach 6? He asked the meaning of "temporary" wall. He then discussed the gabions in Reach 6 and noted that there were failures in the past because both sides were filled, and said that if the bank without the hydrostatic load is filled, it builds. Mr. Beede suggested filling one side only which would block the sight of the gabions. He concluded his remarks by asking why the beautiful 1920s arch span bridge behind the District building was not moved to the park for everyone to enjoy. *Appear B Beede*

223-1 Mr. John Wilson, Tonino Drive, said that his home backed up to the Guadalupe River on Reach 12. He expressed concern about major errors in the EIR relative to maps and recommended that staff review the maps. He questioned the plans for Reach 12 relative to perc ponds, and reported that Arcadia Development was planning to build homes in the area of the farm out to the perc ponds. He said he had Arcadia's planning documents which indicated they were planning on building relatively soon. He expressed frustration that the left hand did not know what the right hand was doing, and pointed out that he had called the District staff and notified them of the pending development several times. *Appear J Wilson*

223-2 He said he considered it a problem when the District was considering moving 24,000 cubic yards of material to a site where development might be occurring.

223-3 Mr. Wilson expressed frustration that the EIR documents referred to endangered species but no other wildlife. He said that it was not recognized that there were other important wildlife species using the river now, and if Reach 12 is torn up as planned, it will impact the bird life in the riparian habitat now. He said that the plans indicate construction where the trees are located and the plan is to destroy all the existing old growth trees. He requested that the issue be addressed in the report.

223-4 He noted that the District was constantly spraying herbicides where weeds were not a problem, which kills the species. He reiterated that the problem was construction along Reach 12 which does not address the existing wildlife or existing percolation ponds scenario. Mr. Wilson also discussed the building of coffer dams which was addressed in the document, noting that there is very little water flow in the river and questioned why the District would have to build three coffer dams in the spring to hold the water back and work downstream.

Mr. Wilson reviewed the tree mitigation plan, and pointed out that there were no trees from Station 960 to Blossom Hill Road, as a result of herbicide spraying, poor irrigation and removal of trees. He pointed out that Reach 12 should have been planted long ago and said he felt the mitigation program was worthless. Mr. Wilson noted that currently his home was above the high water line and not in danger of flooding. He said that the construction shown on Reach 12 addressed building levees, and remarked that if a levee was built on the other side and the levee level is raised above the current farm level, his property would face the potential of flooding, instead of the farm and Arcadia's property. He suggested that the District purchase the farm which would eliminate the unnecessary house construction and give the District 40 acres. 223-5 223-6

Mr. Don Dugdale, 1186 Mayette Avenue, San Jose, requested that the following statement be read into the record: "This project should proceed with all possible speed; 25 years is far too long to wait for completion. Let's try for 15 years maximum! Additional bond issues should be proposed." *Appear D Dugdale* 224-1

Ms. Whitlock read comments from Ms. Paula Oakes, 642 Celebration Ct., San Jose: "I currently live off River Oaks Parkway near the Coyote Creek bypass area between the Montague Expressway and 237. The bypass is truly an eyesore that collects stagnant water—the water overflows into the bypass at a minimal rather than a flood stage. My question, therefore, as I plan to move along Willow Glen Way and Creek Drive is: "Will the proposed bypass plan affect the homes adjacent to the Willow Glen Way Bridge and/or look anything like the bypass I have described?" Ms. Whitlock indicated that a response would be provided in the report. *Comments Fr P Oakes* 225-1

Mr. Gary Jansen, resident, said that the project was taking too long and said that many people pay flood insurance and, at the rate of $400 per year, 25 years would total $10,000. He said he felt the flood insurance situation would not change until the entire project is completed because the project has to be completed before the map can be changed, which means 25 years or possibly longer. He said he did not advocate a tax increase, but that his greatest concern was that when he paid his property tax bill on April 10th, he was offended that some of his taxes have gone to a slum lord. He referred to the Virginia/McLellan area where the District has owned properties for years that are in poor shape. He said that they have improved the area, but over the years they have been blighted, which affects the entire neighborhood. He reiterated that he was offended that his tax money goes toward slum conditions, and said the homes should be purchased quickly and sold to house movers, but to perpetuate slum conditions with his tax money greatly offended him. He questioned what would happen to the houses on Mackey Avenue if they are purchased, would they remain boarded up for a year or two? Mr. Jansen expressed concern that the area did not look good and that property values drop. He said the District should be aware of the situation in the area, particularly in the Virginia/McLellan area. He said he felt the District was a slum lord for that area. He expressed concern about security because of the railroad, freeway, river, and people living in the river area, and questioned if there would be adequate security in the river area when the project was completed. He concluded that 25 years was excessive for a completion date. *Appear G Jansen* 226-1 226-2

Comments
Fr R Klein

227-1 Ms. Whitlock read the statement from Mr. Randy Klein, 2106 Ardis Drive, San Jose. "A community cleanup day might just work; save $, create a beautiful river environment, pull the neighborhood together." He requested that the following questions be addressed in the report: "What is the source of the river contamination prompting the warning signs to be put up years ago? What is the sense of bringing back the salmon to a contaminated and dangerous river?" Ms. Whitlock indicated that the issues would be addressed in the report.

Comments
Fr J Gale

228-1 Ms. Whitlock read the statement from Mr. James Gale, 1738 Creek Drive, San Jose. "Relative to Reach 9, I would like to know exactly what is going to happen in my backyard and view, i.e., what trees will be removed where the road will be? I live across SJWC watershed; have huge trees with beautiful and peaceful surroundings. I do not want to lose a peaceful backyard; this is why I live here. Will someone come to my home and show me what will happen behind my home? If so, I will greatly appreciate this time and put to rest some of my concerns. Thank you."

Appear
A O Black

229-1 Ms. A. O. Black, 1580 Creek Drive, said that she noticed on the proposed plan that there were several bridge replacements and questioned if there was funding in the bridge replacements for the trail to be able to go underneath the bridges; if there will be enough right of way on the sides and if there will be enough money in the budgets to make the bridges allow pedestrian trails beneath them. She asked if there was a possibility of moving the bridge from Willow Glen Way to Pine Street so that Pine Street traffic pattern would be a larger community asset going across the river. She said that currently it appears that the District will be expanding the area on the other side of Pine Street. Ms. Whitlock indicated that the responses would be in the form of a written report and the persons who signed in at the meeting will be notified that the report is available and being presented to the Board of Directors.

Appear
R Palacios

230-1 Ms. Rosemary Palacios asked how long the residents would have to relocate if needed. She said she was representing her in-laws who reside in the area of Edwards and McLellan. Ms. Whitlock said that staff member Brian Shylo would speak with her about the relocation schedule and policy.

Appear
J Martin

231-1 Mr. Joe Martin said that the immediacy of the entire meeting should be to prevent any flooding from occurring in the next 2 to 3 years. He said that in the last two floods, no one came to clean the debris, overgrowth, and dead trees from the Guadalupe River to enable the water to flow freely.

Comments
Fr R Goldstein

232-1 Ms. Whitlock read into the record questions from Ms. Ruth Goldstein, 3880 So. Bascom Avenue, San Jose: (1) "On Page 10 of the public notice, under 'aesthetic quality' ten locations were deemed to be visually impacted. Please specify these ten locations in the response. (2) Describe in more detail the access ramps, what material will they be made of and will they be fenced, and note the ingress and egress locations on main roads. Ms. Whitlock indicated that the questions would be addressed in the written report.

Comments
Fr W Garbett

233-1 to 233-9 Ms. Whitlock read into the record statements and questions from Mr. William Garbett, 683 Faye Park Drive, San Jose: (1) What are the District's plans for weather modifications (cloud seeding)? (2) What are the objectives for dam releases—economic/drought/flood potential? (3) What are the State clearing house numbers for related projects (not in the EIR)? (4) Fast flow policy does not work, cite the Mississippi River; (5) Fast flow can't be strained through the homeless or shopping carts; (6) Levees if built, ultimately fail due to neglect and should not be considered; (7) VTA in the City of San Jose in the housing policy near the transit and freeway must be abandoned; (8) Parkland is a compatible adjacent use on the banks of the rivers; (9) Building a headquarters, buying homes, and water banking rights don't replace the need for reservoir or flood control. 233-1 to 233-9

Mr. Bernardi, who spoke earlier, said that he concurred with the audience member who suggested a glossary of terms in the back of the report. 234-1

Appear M Johnston

Mr. Mike Johnston, Guadalupe Avenue, questioned why there was a 5-year lapse between the year 2003 to 2008, stating there is no schedule of planning for any construction. He said that the 25-year plan is crucial on the funding. 235-1

Mr. Cheong responded that it was related to the funding and the fact that the District does not have the $114 million available. The 5-year lapse is a period to accumulate the funds before starting another phase of the project.

Comments Fr Audience Mbr

An unidentified audience member said that she was told at a previous meeting that the homeowners owned the property to the middle of the creek and for that reason, the maintenance crews do not clean the area which creates more problems. Ms. Whitlock said the issue could be addressed at the conclusion of the meeting. 236-1

Appear B Strickland

Mr. Bob Strickland, Chairman of the South Bay Committee for United Anglers of California, said that the organization was concerned about the issue of fish in the river. He questioned whether the District would provide protection, and asked if it was possible to help clean up the river so that next year there would be a run. He said the organization would like information on the District's policy regarding the fish. 237-1

Ms. Paul, who spoke earlier, asked if there was any hope for some sections of the river to be left in its natural state, specifically in the area between Capitol Expressway and Branham Lane where it is deep and has not come close to the crest. She said that the neighborhood would like an explanation as to why that has to be altered, as they did not see the threat. She said that they did not understand why it was happening, and said that there may be some areas that can be left untouched. 238-1

Mr. Protzik, said that presently the District has a strong incentive to keep the channel clear of debris and garbage to prevent flooding. He said that when the flood control project is partially complete, there will be less motivation on the part of the District to keep the maintenance up, and urged that they consider allocation of funds, resources, time, and manpower to conserve what was built, or it will become an eyesore and not resemble the photographs displayed in the meeting room. 239-1

Mr. Aaronson reported that the Corps altered the river in the past, and urged that it be accomplished in the right manner by not taking the cheapest and easiest way out. He said the sentiment of the Willow Glen community is for recreational purposes and a green natural river. If the banks are expanded and allowed to flow naturally, maintenance will be more economical. 240-1

241-1 Mr. Johmann said that he had documentation of a study in Ohio on housing development along the rivers that indicated that housing prices were 330 percent higher along a natural channel vs. a maintained and artificial channel.

Ms. Whitlock turned the public hearing over to Chairperson Sanchez.

Chairperson Sanchez reminded the audience that written comments would be received through April 18, 1997.

Chairperson Sanchez thanked those present for attending and providing input, and stated that staff would be available to answer questions following the hearing.

Chairperson Sanchez closed the public hearing and adjourned the meeting at 9:50 p.m. to a regular Board meeting at 9 a.m. on April 8, 1997, at 5750 Almaden Expressway, San Jose, California. *Adjourn*

Lauren L. Keller
Clerk/Board of Directors

Approved:

Date:

AMENDED
MINUTES
SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTORS MEETING
November 4, 1997

(Paragraph numbers coincide with agenda item numbers)

A regular meeting of the Board of Directors of Santa Clara Valley Water District was held in the Board Room of the District Administration Building, 5750 Almaden Expressway, San Jose, California, at 9:00 a.m. on November 4, 1997. ***Reg Mtg***

1. Board members in attendance were Directors T. Estremera R. W. Gross, R. C. Kamei, L. Wilson, G. Zlotnick, and S. Sanchez, Chairperson presiding, constituting a quorum of the Board. Director J. Judge was absent. ***Pres Bd***

Staff members in attendance were D. J. Chesterman, E. Cote, J. T. Ferguson, J. Fiedler, M. Hamer, N. D. Hsueh, L. L. Keller, M. J. Klemencic, S. A. Pino, M. Tucker, W. L. Wadlow, G. Waiters, P. K. Whitlock, K. W. Whitman, and S. M. Williams. ***Staff***

2. Chairperson Sanchez opened the meeting for public comment on any subject not on the agenda. ***Pub Comment***

Mr. Steven B. Malech, 1025 Masten Avenue, Gilroy, addressed the Board relative to potential problems at Llagas Creek. He said that impaction has taken place because the creek was enlarged to ten times its original size, resulting in a double load on the creek. He said that there were resulting legal implications but he did not want to have to threaten a lawsuit against the District to get its attention. Mr. Malech said that since 1984 the District has spent $1 million per year of benefit assessment funds in South County and the problem still has not been alleviated. He pointed out that it has not been mentioned in any Board minutes that the District recognizes the impaction, nor has the Board directed management of the District to take care of the problem and declare it a Class A maintenance area. He expressed his frustration that the problem has reached the critical stage. He said that last year there was so much water in the unfinished channel, it was 5 feet deep and washing down the small channel, resulting in the gravel being washed to the corner at Masten Avenue. He said it was the largest turn in the Llagas Creek and was the most dangerous place washing the bank. He pointed out that Mr. Bogle would explain why it is such a critical problem. Mr. Malech stated that even though the District had the right of way on the north side of the creek, the problem still existed. ***Appear S Malech***

Mr. Malech reported that the bridge on Masten Avenue was also a problem with gravel beneath it. He said that there is so much gravel, that the depth is 6 feet, and it is too large and heavy for the water to move it. It is squeezed into the channel to a place when the channel has dug itself 15 feet deep in the ground and has cut the bank; and if not removed before the flood comes, it is very likely to overtop and cause a siphon effect and cut a new channel for the Llagas Creek. He said that it was Class I gravel and a contractor would probably go in and retrieve it at no cost.

Chairperson Sanchez questioned if the District could go in and take the gravel out.

Mr. Malech said that Mr. Anderson, from the Department of Fish & Game, is supportive of doing things that are positive and not destructive. He urged the District to act on a resolution of the problem.

Appear E Bogle

Mr. Ellis Bogle, 3150 Paseo Vista, San Martin, said that Mr. Malech described the problems accurately. He referred to a map and illustrated the location of the problem, and showed photographs that Caltrans took when the drainage problem was being worked on. He also illustrated photos of Little Llagas Creek which indicated problems. He urged District staff to visit the site.

Chairperson Sanchez referred the issue to staff.

Appear M Holmes Re Creek Cleanup Update

3. The Board considered the request from Ms. Marilyn Holmes for an update on creek cleanup on Upper Guadalupe River from mid-stream on Creek Drive to Curtner Avenue (San Jose) and appearance of Ms. Marilyn Holmes.

Ms. Holmes said the purpose of her addressing the Board was to be updated on what has occurred in the creek. She noted that she had concerns relative to the letter sent on October 28 from Mr. Eugene H. Balzer, Maintenance Planner, Operations and Maintenance Group. She referred to portions of Mr. Balzer's letter.

With reference to Mackey Avenue, she said she did not know where Mackey Avenue was, and that she was concerned with Creek Drive from Almaden Expressway to Guadalupe. She said that the letter stated that staff would walk the channel bottom from Curtner Avenue to Alma and would visit the site throughout the winter to look things over. She said they still had not done what she asked them to do. She said that the debris had to be removed or it would cause more problems. Ms. Holmes said that there was a meeting scheduled for November 12 at the Elks Club and it would be advantageous for the Board and District staff to be present. She urged the District to work together with the residents to get the creeks cleaned up now. She expressed her frustration that the City of San Jose (City) indicated that the responsibility for Almaden and Curtner is the District's and the District claims it is not responsible for the area. She urged either the City or the District to clean it up.

Mr. Marc J. Klemencic, Operations and Maintenance Group Manager, reported that since Ms. Holmes last appeared at the Board meeting, staff had gone out and talked with neighbors and are scheduled to remove a tree from the corner; Mr. Balzer outlined other remedies in his letter to Ms. Holmes. He said that relative to the east bank, staff will erect a wooden wall to eliminate the need for sandbagging every year; additional sandbagging and repair of the sandbags already at that location will also be done. He indicated that the right of way maps for the area between Almaden Expressway and Curtner will be examined to determine jurisdiction. Mr. Klemencic reported that the staff member responsible for ordinance violations will contact the property owner relative to the tree problem. He said that although the District does not have right of way, they have jurisdiction under Ordinance 83-2. The property owner will be notified by mail that the tree problem needs to be rectified by the winter. Mr. Klemencic continued to explain the work staff accomplished relative to debris removal.

A discussion ensued regarding Ordinance 83-2 and the methods used by staff to enforce violations. Director Wilson suggested that the District Act be amended to address the right of the District to do work on private property for the overall public benefit. Director Kamei asked staff to investigate the District's ability to expend public funds on private property and asked for criteria to be used to determine if there is eminent danger or a threat to the community. Chairperson Sanchez said he felt the criteria should be very narrow to allow the District to go in and remove a tree because of potential endangerment to the creek flow or overbanking. He suggested a temporary policy to address the anticipated heavy rains this year.

Mr. Klemencic pointed out that if property owners dedicate right of way to the District to maintain their creek in the future, the District fixes erosion problems first.

Apvd Cleanup Action During El Nino

It was moved by Director Wilson, seconded by Director Zlotnick, and unanimously carried that during the El Nino period, staff proactively take action in situations where there is a potential threat to public property to seek the owner's approval and permission to go onto the site and clear the debris; and if there is no property owner approval, seek enforcement action against those property owners who would not permit the District to enter their property. Director Judge was absent.

In response to Chairperson Sanchez' question regarding a permit from Fish & Game, Mr. Keith Anderson, Department of Fish & Game, said that it may already be covered under a memorandum of understanding in place. Other aspects could be under the emergency or the non-declared emergency clause of the Fish & Game Code; the larger projects that might require an agreement could be expedited. Mr. Stanley M. Williams, General Manager, said that the District must depend on the local jurisdictions to actually declare an emergency before it can begin its emergency actions. Mr. Anderson reported that various agencies in Santa Clara County (County) are undertaking a number of projects throughout the County that they have designated as emergency. Under the California Environmental Quality Act (CEQA) they are filing notices of exemption under the non-declared emergency section of CEQA.

Mr. Klemencic pointed out that the San Jose Conservation Corps and the State Conservation Corps would help with the additional workload.

Bd Dir

The Board directed staff to work with private property owners in order to obtain permission to remove trees and other debris that could potentially impact creeks this winter, and if not successful, seek an enforcement of property owner's responsibility under Ordinance 83-2 to maintain creeks.

Upper Guad Rvr Wtrshd Plng Stdy

4. The Board considered the Upper Guadalupe River Watershed Planning Study, and work/study session on Upper Guadalupe River Planning Study, from Highway 101 to Highway 880 and Highway 280 to Blossom Hill Road, San Jose (continued from October 7, 1997). An explanation is contained in the attached agenda memorandum.

Mr. James T. Ferguson, Executive Project Manager, reported that in March 1996 staff conducted a work/study session to solicit input from the Board on the proposed project upstream of Highway 280 prior to public circulation of the draft Environmental Impact Report/Environment Impact Study (EIR/EIS). The Board was supportive of the project in all reaches except Reach 7B and Reach 11A, and revisions were made to the project. A public hearing was held in April 1997 and over 700 comments were received from the public.

Director Zlotnick said that it was not his intention to reopen the item, but requested that his comments be made a part of the record.

242-1 Director Kamei expressed concern with the maintenance problems encountered on the project, and questioned how the long-term maintenance for such a large project could better be addressed to avoid future problems.

Mr. Ferguson said that staff shared Director Kamei's concerns, and explained that they had approached the regulatory agencies on the issue and were not successful in securing a maintenance permit for the project. He said that the regulatory agencies are not willing to permit the project, including the maintenance of the project to keep it in its as-designed status. He pointed out that the long-term maintenance is an element of the project planning and design.

242-2 Director Wilson said that he has been concerned for some time about the permitting process, and felt the permit should include long-term maintenance. He said he felt it was inappropriate to mitigate each time maintenance is needed and hoped the District would reach a point where projects are not permitted unless the permit includes long-term maintenance.

242-3 Director Zlotnick said that his focus was on portions of the project where the minimized vegetation impact (MVI) is different than the preferred project included in the EIR. He clarified that in those reaches it deals with a differential of 115 structures opposed to what is proposed to be removed from the project. He said that in Reaches 10C and 12 there were no additional structures that needed to be removed. Director Zlotnick said that it was interesting that in Reach 12 the right of way cost increased between the preferred project and the MVI from $4 million to $22 million without the need to take any additional structures. He questioned if it was a result of the City rezoning property near the project location. He said that it is evident in other developments where the City has made a decision that in some respects hampers the District's flexibility in completing projects.

Mr. Randall R. Talley, Supervising Engineer, Water Resources Management, said that it was inconsequential; the appraiser appraises the land at its highest and best use.

Mr. Dennis W. Cheong, Associate Civil Engineer, Water Resources Management, explained that the cost difference between the $4 million and $22 million was a result of the impacts of the MVI on the District's existing percolation order supply system, because with the MVI, the District has to permanently remove two gravel dams, and to mitigate for the impact has to acquire additional ponds to replace those losses.

242-4 Director Zlotnick referred to the table on page 113, wherein it was stated that implementing the project would result in substantial disturbance of riparian forest outside the adjacent construction areas. He noted that it could be said about the preferred project, and is not present in terms of characterizing the project because what is being addressed is the minimized vegetation impacts having over a 4 acre less impact to riparian forest; therefore it appeared to be a less substantial impact than the preferred project. He expressed concern that negatives are seemingly put into the description of one alternative only when in fact they apply to all the alternatives.

Referring to page 115, regarding sedimentation and turbidity, Director Zlotnick said he assumed it would be the same and on SRA issues as well. He said that despite all the substantial impacts, it states on page 118, under cumulative impacts, MVI alternative, there would be no long-term cumulative vegetation impacts from the MVI alternative, which is inconsistent with saying there is substantial disturbance and what is said about the long-term impact of the MVI vs. the preferred project and the proposed difficulties in securing future permits. He clarified that in comparison tables, there is characterization that the MVI is in many ways worse than the preferred impact, and yet on the cumulative impacts under vegetation, there is a conclusionary statement that no long-term cumulative vegetation impact is a result of the MVI alternative which is inconsistent with other materials. 242-5

Director Zlotnick said that there were also inconsistencies on page 122, and stated that he would prefer less characterization and more reference to the impact itself because the Board needs to make the characterization in their own minds. He noted that it stated that the impacts of the MVI on vegetation and wildlife resource would be substantially less than for the preferred project, which was inconsistent with the notion that the impacts of doing the MVI in the short term seem to be weighted extremely heavily against it, while the long-term benefits appeared to be out there. 242-6

Mr. Talley clarified that references to impacts, means initial impacts; and long-term cumulative impacts refer to mitigation.

Director Zlotnick said that Item 124 refers to hydrology of the preferred project vs. the MVI alternative and the preferred project gives overall beneficial impacts; whereas the MVI says greater significant impacts than preferred, but can be mitigated. He questioned why the MVI would not be an overall beneficial impact on hydrology. 242-7

Director Zlotnick said that on Reach 10, although there is a $5 million difference in the right of way cost, (page 3-3) it is only a $3.3 million differential; therefore, the District is spending a lot more on construction costs in Reach 10. He said he felt it was an interesting tradeoff, that the ultimate total has a negative result from a cost standpoint. 242-8

Director Zlotnick said that throughout the comment letters received, there were a number of reasons given for eliminating the stream restoration alternative. He said it was ironic that because of those reasons, the argument was made that the District would not be in compliance with 404 B1 analysis of the least environmentally damaging alternative, although it would be the most environmentally beneficial alternative in the long run. He said that it may be a topic for the legislative representatives to address. 242-9

Director Zlotnick referred to page 3-46, and questioned if the regulatory agencies had bought into the concept of the District establishing a mitigation bank up front. Mr. Talley said that they had commented on it. Director Zlotnick said that it appeared to be a potential determinant of other impacts throughout the report whether or not the District is actually going to have the mitigation capability; and if not permitted, there would be ripple effects throughout 242-10 the proposed project in terms of cost and other things, and questioned whether it was a fair assumption that the District would get it.

Mr. Talley said that there were future erosion repair projects that would potentially erode in the future with any of the alternatives. He said he did not think that it would change the costs or the plan selection. He said that staff would begin putting long-term maintenance into the project plans.

242-11 Relative to the reach comparison (page 3-51 onward), Director Zlotnick requested that a chart be used to illustrate additional structures needed in Reach 9 and the number taken out for the preferred alternative, illustrating the percentage differential.

242-12 Director Zlotnick questioned the reference to Reach 12 on page 353, relative to loss of instream percolation ponds, and whether it would be mitigated. Mr. Talley said that if there is a potential impact, there is an attempt to mitigate it, whether it impacts water supply or the environment.

242-13 Director Zlotnick referred to pages 4.2-10 and 4.2-12, relative to groundwater recharge and the loss of the ponds. He said that the statement says that if the alternative was implemented, the District should evaluate the water supply need for groundwater recharge and consider compensating for this loss of recharge by creating additional offstream capability.

242-14 Director Zlotnick said that page 4.4-13 addresses the District's potential acquisition of contaminated sites. He suggested that the legislative representatives investigate the possibility of an exemption through CERCLA to say that if a public entity is going in to do a project for public safety reasons and has to purchase the right of way, they do not thereby become a potentially responsible party. He expressed concern about the right of way later in the meeting.

Discussion continued wherein Mr. Talley pointed out that the District purchases only clean land for right of way. Director Zlotnick clarified that if the District is turning away from a piece of property because of fear of purchasing a liability and the property beneficial to the project, the District needs to get out from under that, because the main goal is the flood control project.

242-15 Director Zlotnick said that the numbers relative to the number of structures should be consistent. He said that on page 4.5-12, MVI alternative, reference to "limited" should be clarified whether it meant staff could not drive trucks into the area and it would have to be more labor intensive, because residents see the word "access" and assume the District staff could not get in the area to do anything.

242-16 Relative to page 4.9-8, air quality, Director Zlotnick questioned if any analysis was done, and noted that there would be more vegetation ultimately through mitigation and other things. He asked if there was any discussion of the air quality benefits of increased vegetation in the valley. He said it was a legitimate topic to address.

242-17 Referring to page 4.13-25, inconsistencies under the MVI, Director Zlotnick said that impacts on wildlife for MVI would be similar to those for the preferred project but they would affect smaller acreages in various reaches. He said he felt there would also be less fragmentation in the MVI alternative and there would be more habitat. He said inconsistencies existed; in one area there is an argument against it as having too much benefit, and in another area it indicates it is the same.

Referring to page 4.14-5, fisheries, Director Zlotnick recommended discussion about the impact of the Steelhead Trout listing as it was not in place when the report was written. 242-18

Referring to page 4.14-8, Director Zlotnick pointed out that the information on Steelhead Trout and Chinook was from 1954 and said that it could prove to be either a benefit or a burden to the District. He also noted that the investigation was taken from Wadell Creek which flows into the Pacific Ocean and said there may be some difference in creeks flowing into the Bay. 242-19

Director Zlotnick referred to page 4.14-36, relative to the impact of the bypass channels, and said he believed part of the project would include monitoring and extraction of any stranded fish, which would be part of the alternative. He said that part of the cost of doing the more bypass alternatives is operations and maintenance (O&M) and includes having to go out and rescue stranded fish, and should be part of the analysis. 242-20

Director Zlotnick referred to page 9-2, relative to the Endangered Species Act (ESA), relative to biotic resource, and commented that Steelhead Trout are now listed, and asked if Coho was listed at the time the report was written. 242-21

Relative to the comment letters, Director Zlotnick noted that reference to EPA's comments, states "recommend revaluation of the stream restoration ...benefits." He questioned if there was any connection to that alternative, the MVI alternative, or the project alternative with the fisheries management strategy being developed for the County, and what were the costs associated with that attributable to this project. 242-22

Referring to the Army Corps of Engineers (Corps) statement that the upper project would not function as designed, Director Zlotnick questioned the timeline and asked if staff agreed that there are channel inadequacies downstream or were they referring to the sediment problems in the lower reaches. He also asked if it would be repaired. 242-23

Mr. Ferguson stated that the current schedule is some time in 1998/99.

Director Zlotnick questioned the impact of a recommendation by Fish & Wildlife, Fish & Game, and others of the denial of the Corps permit and asked if the Corps permit was received. Mr. Talley responded that the Corps did not issue the permit. He said that Fish & Wildlife would grant the District a permit for Reaches 6, 7, and 8. He said that staff had to respond to the comments and the Corps would evaluate the responses. 242-24

Director Zlotnick referred to the letter from EPA regarding the Clean Air Act and the need to complete a conformity analysis. He questioned what the report was, if the District completed one, and how long it would take. 242-25

Director Zlotnick referred to the second paragraph of page 38 of the comment letters, "we are concerned the impact documentation essentially addresses only one issue (flood control)..." and said he concurred with the comment, and questioned if because of the District mission there were limits on addressing other issues. He said he was pleased that the comment letters from the 242-26 regulatory agencies acknowledged that the District document was an improvement over the Corps' document. Director Zlotnick said he sympathized with a number of people who addressed the significant uncertainty about mitigation requirements and other permit issues as being a reason not to support an MVI alternative for the stream restoration alternative. He said permit issues should not be a blockage to any project.

242-27 In response to Director Zlotnick's question if there was a way to phase the construction schedule, Mr. Talley said that it was not a standard project, that the District generally had smaller projects and completed them in a shorter time span.

242-28 Referring to page 54, Fish & Game comments, Director Zlotnick questioned if the completion date could be sooner than the year 2023. Mr. Talley said that it was a legitimate response and an earlier completion date was feasible.

242-29 Director Zlotnick requested that a comment be made responding to the bio engineering slope protection measures (page 57). He also questioned the implications of the reference to the indication of the mercury contamination problem and the potential recommendation against certification.

Mr. Anderson responded that one of the implications might be that if the District certifies the document unacceptable to regulatory agencies, it would be challenged in court under CEQA.

Mr. Talley explained that the consultant will draft a response or several responses to each comment received which will be presented to the Board, which will provide another opportunity to respond to the comments.

242-30 Director Zlotnick pointed out that at the public hearing, Mr. Tom Fletcher representing the City, indicated that the City was supportive of the project; that it not only met the goals of the District charter but also met the goals of the City's General Plan; however, throughout the comment letters, there were comments that the project was inconsistent with the City's General Plan. Mr. Talley said that staff has worked extensively with Public Works, the Planning Department, and the Recreation Department and was confident that it was consistent with the City's General Plan.

242-31 Director Wilson said that on a more global sense, there are expectations by different sectors of what the channel is going to look like or what the flood control project is going to look like when it is completed. Some people are thinking in terms of a park-like setting and trails, things focused on people uses, and others are looking at a habitat and habitat protection, and they are not necessarily compatible. He said he felt the vision should be defined in terms of relationship to habitat and human uses and how it will play out. He said it may be the opportune time to look at tradeoffs that have to be made environmentally when addressing the comprehensive nature of what is being done.

Mr. Talley said that staff attempted to incorporate all the elements including the continuity of riparian corridor and the continuity of the fish passage, as well as the recreational trail. Director Wilson said that in instances where trails meet the bottom of the creek channel, there are conflicts between what is planned and the concern for habitat protection which is more important than intensive urban use; and it is a community decision, not necessarily solely the

District's. Mr. Talley pointed out that staff was not attempting to put trails through mitigation sites.

Director Zlotnick said that he shared some of the concerns from the Life Web letter on page 118, relative to the comment that the bulk of the report is heavily weighted toward the preferred project with the MVI alternative receiving significantly less consideration. He said the stream restoration alternative was not adequately presented in the DEIR for the Board's review. He said it appeared that without an unbiased discussion of the proposed flood control project alternatives, he felt the independent judgment of the Board of Directors was potentially compromised. With the comments submitted, and not necessarily going completely into the stream restoration alternative, but certainly in the differential between the preferred project and the MVI, he requested more detailed discussion of the differences, impacts and costs if possible, and not necessarily of the total differential because staff is addressing 5 different reaches. 242-32

Director Zlotnick thanked the Board for the opportunity to comment on the report and the comment letters.

Director Kamei said that there is the expectation that projects will be designed and built and the money will come later. Community members have the expectation that it is part of the District plans, even though there is a footnote included that it assumes no benefit assessment past the year 2000, and they question why the District does not provide for it, and question future funding. She said that although it is being addressed with the comprehensive flood control project, the District needs to illustrate it in bigger, bolder letters to inform the community what the District can do. She pointed out that nothing will be done without the funding, and as residents ask the District to clear trees, the cost has to be considered. Director Kamei expressed her disappointment in the lack of support from the business community when it was time to address benefit assessment, after the District went out of its way and spent a lot of money to raise the levees even though it was a temporary solution. She expressed her skepticism and said that when looking at projects, it should be noted in bold letters that the project will only happen if there are funds. 242-33

Chairperson Sanchez declared a recess. Upon reconvening, the same Board members and staff were present. ***Recess***

Chairperson Sanchez moved the agenda to Item 10c.

10c. The Board considered the attached Phase IV agreement with Jones and Stokes Associates Inc., for environmental consulting services, Upper Guadalupe River Watershed Planning Study (San Jose), (continued from October 21, 1997). An explanation is contained in the attached agenda memorandum.

***Apvd Agmt
Jones & Stokes
Upper Guad
Rvr Wtrshd
Plng Stdy***

Director Kamei expressed concern about the subcontracting process used for the agreement and questioned why the District did not hire Archeological Resources Management solely, because it appeared to be a layering of costs. She also expressed concern about the high cost for one phase only.

Chairperson Sanchez questioned hiring the individual consultants and staff dealing with each of them for different aspects of the contract.